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ABSTRACT

The manual is a guide for management representatives engaged in collective bargaining in higher education. It focuses primarily on faculty bargaining, but also addresses the problems of non-faculty units. It is intended for administrators, including governing board members, faced with significant responsibility for bargaining but without prior experience or training in labor relations. The first chapter outlines the university's reaction to the initial union drive to organize faculty or staff. Chapter 2 focuses on the president and board, and deals with key decisions that must be made before beginning negotiations. Beginning with chapter 3, the focus shifts to the president and chief negotiator, and covers the details of the bargaining process, including: gathering data, the first faculty contract, scope of negotiations, managing the management team, managing time and communication in negotiations, dealing with the news media, managing language in negotiations, suggestions for seven standard contract articles, getting negotiations under way, managing trade-offs in negotiation, strike preparations, dealing with third parties, coming to closure in negotiations, ratifying a tentative agreement, and living with the union. Appended materials include suggestions for further reading and a glossary. (MSE)

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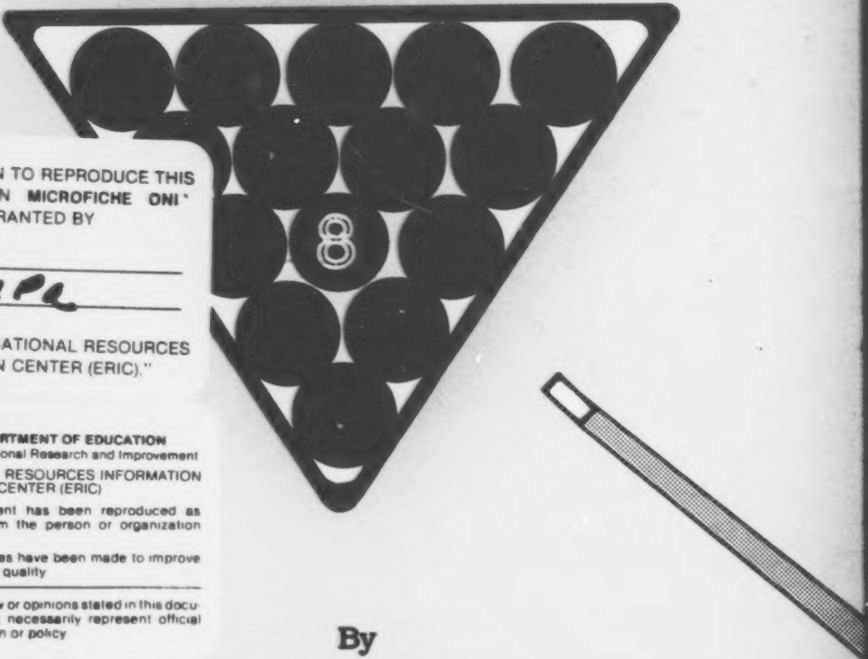
# THE RIGHT BALL

## A Primer for Management Negotiators in Higher Education



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By
Taylor Alderman

College and University Personnel Association

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About *The Right Ball . . .*

"Seasoned negotiators as well as novices to the bargaining table will benefit from Taylor Alderman's detailed and pictorial account of collective bargaining. An experienced management chief negotiator describes the methods, procedures, tactics, and strategies that have worked for almost 20 years. This step-by-step approach to collective bargaining in higher education is both informal and pragmatic."

*Anita Webb-Lupo*
*Assistant Provost*
*Illinois State University*

"When I was appointed chief negotiator in 1979 at a small liberal arts college, I looked for a book to guide me—there was none. *The Right Ball* provides what I was seeking, and it seems equally useful to those entering the process at the first or succeeding contracts. It's a welcome addition!"

*Barbara P. Losty*
*Dean*
*University of Wisconsin Center—*
*Sheboygan County*

"One of the most vital and comprehensive 'how to do it' books, which provides practical guidelines for negotiators without prior experience and training who are confronted with collective bargaining responsibilities."

*Joseph Sicotte, Associate Vice Chancellor*
*Oregon State System of Higher Education*

# The *Right* Ball:

## A Primer for Management Negotiators in Higher Education

Taylor Alderman
Youngstown State University

HE 023 382

College and University Personnel Association

The College and University Personnel Association is an international network of some 4,500 personnel administrators representing more than 1,400 colleges and universities. CUPA publishes books, monographs, manuals, and periodicals on issues related to personnel administration and labor relations in higher education. In addition to publications, CUPA and its state affiliates offer a range of conferences, workshops, and seminars that provide training opportunities and access to the network of labor relations professionals and personnel administrators nationwide. For information on books of related interest, or for a catalog of CUPA publications, contact the Communications Manager at CUPA, (202) 429-0311.

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# Foreword

The College and University Personnel Association, through its Publications and Research Advisory Board, is dedicated to providing the higher education community with publications on current issues affecting human resource management. This guide for management negotiators in higher education is part of an ongoing effort to bring timely and relevant information to our members. Additional writings on the subject can be found in the CUPA book: *Collective Bargaining in Higher Education: The State of the Art*, which is a compendium of essays written by administrators and academicians.

CUPA is indebted to Taylor Alderman for the time and effort he volunteered throughout the course of publishing this book. It is only through the contributions of such authors that CUPA can produce publications of this caliber. They are the foundation on which the CUPA publications program is built, and I would encourage anyone interested in becoming involved with CUPA publications to contact me.

Daniel J. Julius, Ph.D.
Associate Vice President for
Academic Affairs, University of
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College and University Personnel Association

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For a book so short, this work rests on many obligations.

President Emeritus John J. Coffelt and President Neil D. Humphrey of Youngstown State University have epitomized the effective president in the environment of collective bargaining. Each, in his own way, has been accessible, perceptive, and supportive, and I am deeply indebted to them. In addition, Neil Humphrey supported the writing of this book by granting me a staff development leave during 1987–88. He also read the manuscript, and offered a number of helpful suggestions.

Members of the University's Board of Trustees have contributed significantly to the development of the negotiating model described in this book. They have given generously of their time and expertise to play their oversight role in collective bargaining. I am particularly grateful to the individuals who have served on the Board's Personnel Relations Committee since 1976.

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Other administrative colleagues who have gone to the bargaining table with me are acknowledged on the dedication page.

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Two past representatives of Youngstown State's faculty union were also kind enough to read the manuscript. Dr. Stephen Hanzély, Professor of Physics and Astronomy, has served as both president and chief negotiator, and his insights on the manuscript reflected the high intelligence and civil candor that characterize all his work. Dr. Thomas A. Shipka, Chairperson and Professor of Philosophy and Religious Studies, organized the faculty in 1971, and for 15 years served as president or chief negotiator (and occasionally both). His detailed comments on the manuscript reflected his awesome editorial skills, as well as his detailed knowledge of the intricacies of how collective bargaining really works. He was also extremely helpful in offering suggestions for organizing the appendix on suggestions for further reading.

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Diane A. Scacchetti, Personnel Assistant, kept the routine operations of my office running smoothly during my absence to work on this book, and for over a decade has provided invaluable assistance in collective bargaining and other areas.

None of the individuals acknowledged above bears any responsibility for the shortcomings in this book, but all have earned my deep appreciation for the assistance they have given me.

Finally, for having endured it all over many years, with remarkable grace and unflagging support, I am indebted to my wife Pam.

Taylor Alderman
Youngstown, Ohio

This work is dedicated with appreciation to the men and women who have served on the negotiating teams of Youngstown State University since 1976.

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# Introduction

This manual offers in a summary fashion a "how to do it" guide for management representatives engaged in collective bargaining in higher education; it is an informal handbook that bypasses formal research and the literature on the subject. The manual derives rather from the experience of the author.

That experience goes back to the early 1970s, when collective bargaining, especially for faculty, was still a new experience in most of higher education. As a young assistant professor of English, I watched the union campaign that secured collective bargaining representation for full-time faculty at my university. I was serving as department chair—and excluded from the faculty bargaining unit—when the first agreement with the faculty was ratified, and almost immediately I was caught up in a series of grievances related to my recommendations that the contracts of a number of faculty not be renewed. In 1974 I was appointed to a position on the provost's staff, and designated to serve on the university's negotiating team as bargaining got under way to secure a second agreement with the faculty. The office of the chief negotiator was downstairs from mine, and I spent a good deal of time working informally with him on the negotiations. In 1976 I was chosen to serve as chief negotiator for the third round of faculty bargaining, and since then I have served as chief negotiator in negotiations with all the unions on my campus (currently, four).

Over that period I have been to the bargaining table thirteen times, six times with the faculty and seven times with the three non-faculty units. Four times the entire faculty contract was open, and twice negotiations were limited to a wage reopener. All our hourly civil service staff except police officers are in a single, inclusive unit (a "wall-to-wall" unit, in the parlance of the trade), and I've negotiated four contracts with the various unions that have represented them over the past decade. I've done two agreements with our police officers, and most recently completed an initial contract with a residual unit composed of non-supervisory, salaried administrative staff.

Each trip to the bargaining table eventually resulted in an agreement that was ratified unanimously by the university's board of trustees, and by at least 70 percent of the members of the bargaining unit who voted on ratification. There have been no strikes. The negotiations varied tremendously in the ease or the difficulty in getting to closure, the level of tension or animosity at the table, the issues that were central, and the board's degree of involvement. Several times the bargaining led to the rejection by one party or both of a recommended settlement. But each time an agreement was somehow reached that was finally acceptable to both parties, by an overwhelming margin or by unanimity.

How was that accomplished?

This manual describes, from the experience of one management chief negotiator, the methods, the procedures, the tactics and the strategies that have worked over a period of many years. As suggested above, the approach to the issue is informal, pragmatic, and occasionally anecdotal.

If my experience in bargaining is lengthy and diverse, it is nonetheless limited to one institution: Youngstown State University, a public, urban, open-admissions, largely non-residential university with an enrollment of some 15,000 students and a full-time faculty of 450, of whom over 400 are in the faculty bargaining unit. My experience, as reflected in this manual, will fit more closely the experience of those in the public sector than in the private; in single institutions rather than multi-campus systems; in middle-sized institutions rather than the very large or the small; and in those public institutions operating in a state with a comprehensive public sector bargaining law (such as Ohio) than in those states with no such legislation. Two other limitations are inherent in a manual such as this. Given the diversity of legal jurisdictions, no general handbook can reliably guide the new chief negotiator to proper answers to all the highly specific questions he or she will encounter in negotiations; there is no substitute for a thorough understanding of the legal environment in which you will be negotiating. Similarly, this manual is no substitute for legal counsel on matters closely related to the legal restrictions and obligations that define so much of the activities of collective bargaining. Legal advice is routinely required on many aspects of any set of negotiations.

The manual focuses primarily on faculty bargaining, but addresses the problems of non-faculty units as well. The subject matter of bargaining with faculty differs sharply from that of negotiations with non-faculty, particularly in those areas unique to higher education (e.g., faculty workload, peer review, etc.). Nevertheless, it has been my experience that the same skills are needed for negotiating with any union representing any bargaining unit, and the same procedures and tactics that have been successful for me in faculty bargaining have worked equally well with non-faculty units. The dynamics of bargaining seem to be a constant, and many of the specific proposals (such as term of agreement, dues check-off, grievance procedure, and union rights) are essentially identical in all negotiations.

This manual is intended to serve those administrators who find themselves faced with some significant responsibility in bargaining without prior experience or formal training in labor relations: negotiators, presidents, provosts, and bargaining team members. Another critical audience includes members of governing boards, individuals who often enter simultaneously the worlds of governance in higher education and management from the perspective of labor relations.

There are no secrets here, no magic formulas. Contrary to some advertisements, there is no simplified four-step system that will transform you into a successful negotiator in seven days. But experience, combined with luck, can lead to a sharpening of some of the standard skills used in the bargaining process, to the discovery of tactics to push the process along, to the polishing of various procedures that make negotiations work.

The essential message of the book is simple. Keep your eye on the "right" ball, avoid the many distractions that may catch your attention, and concentrate instead on the primary mission of securing an agreement with the union.

The structure of the manual is also simple. Chapter 1 outlines the university's reaction to the initial union drive to organize the faculty or staff. Chapter 2 focuses on the president and the board, and deals with the key decisions that must be made prior to the beginning of negotiations. Beginning with Chapter 3, the focus shifts to the president and the chief negotiator,[1] and covers the details of the bargaining process: gathering data, developing strategy, and managing various aspects of the negotiations.

As a final introductory note, I would emphasize that nothing in this manual should be construed as representing the official position of Youngstown State University on collective bargaining. The members of the board of trustees and the president of my university have my appreciation for having created an environment in which I could negotiate successfully over the years, but they bear no responsibility for the contents of this work.

---

[1] Titles in higher education are not standardized, and often are confusing to persons unfamiliar with academe. In this work I use the term "president" to indicate the chief executive officer; "provost" for chief academic officer, "board" for the institution's governing board; "labor board" for the state labor relations board, and "chief negotiator" for the chief spokesperson for management at the bargaining table.

Let us proceed.

# 1

# The Movement to Organize

The university's management makes its first major decision related to collective bargaining when the union launches the campaign to secure recognition as exclusive bargaining agent. The university has three options: (1) it can, within limitations, oppose the union's organizational drive by seeking to convince its employees that a vote against collective bargaining will be in their best interests; (2) the university can remain neutral, leaving the decision of collective bargaining representation to the members of the proposed bargaining unit; or (3) the university can, again within limitations, take certain actions that will facilitate unionization.

## Opposing Unionization

The limitations on your actions, like almost all aspects of collective bargaining, will vary from one jurisdiction to another, but several are standard. You may not, in general, interfere with your employees in the exercise of their protected rights to form associations and to act collectively. This means, for example, you can't fire an employee for seeking to organize a union. You can't promise to reward employees who oppose unionization of the work force, or threaten retaliation against those who support it. You can't give pay raises or change working conditions during a union campaign, if those changes can be demonstrated to be an attempt to thwart the drive to unionize.

You can't provide financial support to the union, or show a preference for one bargaining agent over a rival in the campaign.

Although management's actions are restricted, you retain the right to advise your employees of the university's position on collective bargaining. If your position is that collective bargaining is unnecessary and contrary to the institution's best interests, you can inform the members of your faculty that collective bargaining will terminate the collegial model of shared governance and replace it with the adversarial mode of labor/management negotiations. You can inform them of the dues structure of the union, and explain that the agency fee (a mandatory assessment paid to the union by all members of the bargaining unit who decide not to join the union) is routinely sought by unions at the bargaining table. You can remind the faculty or staff of how much you are already paying in compensation, tabulating all those "hidden" dollars that go to the retirement system, the insurance program, workers' compensation, unemployment compensation, tuition remission, etc. You can tell them unions base their strength on the ultimate threat that if they cannot achieve their goals in any other fashion, they will take their membership out on strike; many people view participating in a strike as a most unpleasant prospect.

On a more mundane level, you can restrict or perhaps bar union solicitation activities on your campus, at least during the employees' working hours, and you can restrict access to your internal communication systems of bulletin boards, campus mail, and telephone system.

## Remaining Neutral

The second option is neutrality. This is a meaningful course of action only if opposition to the union emerges from the group being organized, opposition strong enough and talented enough to trigger a full debate of the issues within the proposed bargaining unit. If opposition does not surface, the union will typically control the situation, saturating the campus with information uniformly and glowingly supporting collective bargaining. Administrative neutrality and silence will be interpreted as tacit approval of the union's organizational drive, or at least stoic resignation to it and acceptance of it.

A variant of neutrality is the management "information" campaign. This involves adopting the position that while management is neutral on how the employees should vote in the election, it wants to be certain that the employees have the information necessary to evaluate the alternatives and to reach an informed conclusion. Thus management provides the employees with information to balance the union's self-serving literature.

"Information" campaigns are often smoke screens, anti-organizational campaigns slightly disguised by a euphemistic title. Union organizers understand this perfectly, and may counterattack with great energy, seeking to force management to reveal fully its perceived anti-union bias. From the viewpoint of the union organizer, management has treated its work force unfairly, and has been able to do so because the employees have not enjoyed union representation; opposition to the union, it may be argued, merely validates the need for union representation.

## Facilitating Unionization

Finally, if management's analysis of the situation is that unionization is inevitable, you may conclude that the university's best interests will be served by facilitating the process. If this is the conclusion, much can be gained by seizing the initiative and exploiting the opportunities presented. Typically you may voluntarily recognize the union, averting or shortening the full organizational process, or you may agree to expedite the election.

If you choose this course of action, you may be able to manipulate the calendar of negotiations to your advantage; this is discussed in more detail in Chapter 7. You may be able to exert some influence over the selection of a bargaining agent, in that a protracted union campaign can bring the intervention of a union more militant and less desirable than the agent originally seeking to organize. You may find some benefit in union/management relations if you go to the bargaining table having from the beginning cooperated with the union rather than opposing it. Most important, agreeing to facilitate the process may give you a degree of control over determining the scope of unit that might be otherwise unavailable. (This is discussed in more detail below.)

## Identifying a Course of Action

In summary, these are your options, and they should be evaluated with great care in the context of your institution's goals and objectives. You may conclude that collective bargaining is undesirable and unnecessary, and you may believe that your faculty or staff will agree with you if they understand fully the impact that collective bargaining may have upon their professional lives. This analysis may suggest conducting a campaign to counter the union's, urging your faculty or staff to vote for no representation. Neutrality may appear to be the least desirable option, as it carries the appearance of indecision or inaction. Despite this weakness, neutrality has certain advantages. From a position of neutrality you at least avoid the potential errors of opposing unionization and losing the vote, or—conversely—precipitously facilitating unionization when the outcome might otherwise have been a vote for no representation. (Some faculty or staff may perceive management opposition to the union as a good reason to vote for it.) If you have remained neutral, the outcome of the election cannot be attacked as tainted as a result of your intervention. Third, you may conclude that your interests are best served by facilitating the process, through extending voluntary recognition or agreeing to an expedited election schedule.

Several bits of advice:

1. **Respond to the organizational drive with great care.** Arguably, management's reaction to the first organizational efforts of the union will constitute the most important decision the institution will make in the collective bargaining process. In theory, and in law, the faculty's decision to unionize is revocable; all bargaining units retain the right to decertify the union and to end the collective bargaining relationship. Historically, however, that seldom occurs. Of the hundreds of faculties in higher education that have voted to unionize during the past twenty years, only a handful have subsequently reversed that decision through voluntary decertification. If management believes the university will be better served without the presence of collective bargaining, the **only** opportunity to debate the issue may occur during the organizational drive. Your faculty in particular, once unionized, may never look back.

2. **Always insist upon an election.** The union may argue that an election is unnecessary, because a majority of the faculty or staff have signed authorization cards expressing their support for unionization. However, such signatures are always suspect. They may have been solicited over a period of many months; the cards may have been signed as a result of peer pressure, or without a full understanding of their significance. Seldom will there be an independent authentication of the signatures. There is no substitute for a timely election, conducted by a neutral third party, with secret ballots, poll watchers, and an official record of the results.

3. **Get professional assistance before launching a campaign to oppose the unionization of your faculty or staff.** The details of precisely what you may do and say in a campaign are complex, and require analysis and review by an attorney familiar in detail with the labor law to which you are subject. The cost of major errors is high; in the extreme, if it is determined that your actions have created an environment in which a free election is impossible, the labor board can certify the union without an election and order you to negotiate. In addition to an experienced attorney, you should have the assistance of someone who has previous management experience in running a campaign. Bear in mind that the union will have spent a significant

amount of money before it formally launches its campaign, and will have committed a good deal more. To a university administration subjected for the first time to a union organizational campaign, the process may appear arcane or intimidating (not to mention infuriating), but to the veteran organizers employed by the union, it will be old hat. The union will probably have formidable resources available to commit to the campaign; you are unwise if you oppose these forces without staff expertise of your own.

## Determining the Scope of the Bargaining Unit

Between the time the organizational drive gets underway and the date the election is held, the composition of the bargaining unit is established through a process known as unit determination. This means defining precisely who is to be included in the bargaining unit. The terms "bargaining unit" and "union" are often confused, and sometimes used synonymously, which is inaccurate. A bargaining unit includes all faculty or staff who are serving in positions which, in their totality, have been certified as a proper group of employees to engage in collective bargaining. The union, by contrast, is the organization which serves (or seeks to serve) as the exclusive representative of the members of the bargaining unit in negotiations with the employer. Bargaining unit status is affixed to positions rather than people, and an individual who moves from one position to another may move into or out of the bargaining unit, or from one unit to another. Union membership, conversely, usually results from an individual's decision to join the organization, and may be unrelated to bargaining unit status. For example, the provost may retain membership in the American Association of University Professors, but he or she will never be in the faculty bargaining unit represented by AAUP.

Positions included in a bargaining unit usually must pass two general tests. First, bargaining units are normally composed of positions whose incumbents are entitled by law to engage in collective bargaining. Excluded from that entitlement are individuals whose positions are supervisory, managerial, confidential, or executive. Unions, founded on the premise that strength lies in numbers, seldom err on the side of understatement in their initial delineation of who is to be included in the bargaining unit. Management typically argues for the exclusion of far more positions than the union proposes, particularly on the basis of supervision or confidentiality. Second, positions in a bargaining unit are deemed to share a commonality of interest sufficient to permit them to be represented collectively. This principle is often stated with some specificity in labor law. Typically professionals and non-professionals cannot be included in the same unit unless both groups vote for inclusion. Police officers may be barred from inclusion with other staff in a larger unit, and may be subject to a separate process of dispute resolution (e.g., arbitration rather than the right to strike). Labor laws typically define unit composition in further detail, which varies from one jurisdiction to another. In Ohio, for example, department chairpersons, part-time faculty, and students are statutorily excluded from the right to be represented in collective bargaining.

Unit determination can occur in several ways. If the negotiations occur under the sole authority of a resolution of the governing board, the board has the authority to determine the scope of the bargaining unit. If negotiations occur under a collective bargaining law, the labor board generally determines the unit. This may follow hearings held to gather information, to hear the testimony of employees whose positions are in dispute, and to hear arguments from union and management on inclusion or exclusion of positions. Discussions between union and management may result in an informally negotiated agreement on the scope of the proposed unit; such an agreement is then submitted to the labor board for approval and certification.

## The Wisdom of a Few Large Units

A critical element to bear in mind as you work through unit determination is how many units management would prefer to deal with. The conventional wisdom is, the fewer the better. Fragmentation of the work force into a large number of small units creates many problems. Assume you employ six people to service and maintain widgets. Your negotiations with their union will include an exhaustive examination of the details of widgetry. If, conversely, the six widget people are part of a 300-person unit of general support staff, the idiosyncracies of their work will probably receive a proportionate amount of attention. In addition to the increased workload involved in negotiating and administering a great many contracts, the outcome of other negotiations can be directly affected. Bargaining units routinely use each other for leverage, each seeking to achieve at least as much as the other units have received; the more units you have, the greater the potential for leverage. Simultaneous expiration dates of different contracts pose another problem. If one set of negotiations leads to a strike and other agreements are expiring simultaneously, expect union solidarity; all units involved may stay on strike until you reach agreement with your six widget maintenance and service staff.

Two other considerations are important to unit determination. Bear in mind that the staff excluded from negotiations will be the foundation of your work force in the event of a strike, and evaluate each contested position from this perspective. If you effectively negotiate the scope of unit with the union, this aspect is crucial. (Chapter 14 puts this concern in context.)

Finally, management's position on the scope of unit is occasionally shaped by its desire to influence the results of the election. Management may conclude, for example, that if the scope of the proposed faculty unit is broadened to include department chairs and other academic professionals who identify with the administration, there is *no way* the union can win the election. Let me suggest that this approach is only slightly more intelligent (or less stupid) than Russian roulette. A defined bargaining unit is typically only one uncontrollable and unpredictable election away from becoming a legal entity with which a university may have to deal for many years to come. Management is always well advised to seek a delineation of bargaining units that include only those positions which should be included, allocated among multiple units in the pattern that best serves management's legitimate needs.

Evaluate any proposed bargaining unit carefully to determine if the university would be better served through some other configuration. If your conclusion is yes, seek the change that will work better.

## The Election

About the election itself, little needs to be said. If your faculty or staff vote for no representation, you should move quickly to analyze carefully what occurred during the campaign, and to determine what administrative actions seem appropriate as a result.

If the vote supports representation for collective bargaining, you are on your way to the bargaining table.

## Summary

When the first discussions of unionization of your faculty or staff occur, explore carefully the alternatives available to you. Consider whether your overall interests will be served best by opposing the union's organizational efforts, by remaining neutral, or by taking certain steps to facilitate the process. If you decide to launch a counter campaign to oppose the union, get professional assistance. In the unit determination process, keep out of the bargaining unit those persons who should be excluded, and consider carefully whether the proposed unit should be combined with an existing unit, or enlarged to include other similar positions. Be prepared, shortly after the election, to enter negotiations.

# 2

# Initial Involvement by the Board

The first major step in preparing for negotiations is to be certain that the governing board has a full understanding of how the process works, and is in solid agreement on the approach to be followed. The president, with appropriate staff assistance, should take the initiative in getting these matters resolved. The most important immediate element is securing a basic understanding by the board of the modification of the decision-making process that collective bargaining requires.

## Educating the Board

Most non-routine decisions made by boards emerge from a standard procedure. A concept originates with a board member, or the president, or an officer, and is tentatively discussed. A proposal is drafted, reviewed, discussed, and advanced to a committee of the board for consideration; at that point it is subject to further revision, or endorsement, or return for further study. If it is advanced with a recommendation of adoption, the board as a whole has the same set of options: to approve, to reject, to modify, to table, to return for further study.

Collective bargaining requires essentially that this process be reversed, turned upside down, with a review and analysis of the issues occurring first, followed by a preliminary agreement by the board that the university's chief negotiator is authorized to secure any agreement within specified parameters—and that such an agreement will be ratified.

Stated in this fashion, the process sounds simple enough, but there is ample opportunity for things to go wrong. Probably the most common major problem for chief negotiators serving management is failure to determine in advance precisely what terms are acceptable to the president and ratifiable by the board. This problem is revealed, typically, when tentative agreement has been reached; at this point, dissatisfaction on the part of the president and/or the board presents difficulties for everyone concerned. If the agreement is rejected, the chief negotiator's credibility is damaged or destroyed, and the board will appear not to have given adequate guidance to the chief negotiator. Or, more likely, the chief negotiator will be perceived as having exceeded his or her authority, or having failed to understand the established parameters. The union will predictably cry foul, at the least demanding that the board send someone to the table with the authority to execute a ratifiable agreement. If the tentative agreement is ratified, despite misgivings by the president and/or the board, the dissatisfaction of those opposing the agreement, and their lack of confidence in the negotiator, will linger for some time to come.

The point of all this is simple: the board must be involved from the beginning, to whatever detail it deems appropriate, in the establishment of parameters, in the identification of the staff, and in the delineation of the responsibilities and reporting procedures that will govern the negotiations. The chief negotiator has an obligation to secure an agreement within authorized parameters; the president and the board have a corollary obligation to identify those parameters with clarity and precision.

## Selecting a Chief Negotiator

The first staffing decision for the president and the board is whom to designate as chief negotiator. There are two common patterns, and each works for a variety of universities. Probably the more common pattern is to assign the role to someone on staff, either on an ad hoc basis or as part of his or her regular responsibilities. The other approach is to hire a professional from off campus, typically an attorney. The two approaches have advantages and disadvantages that mirror each other.

With the professional from off campus, the board can secure legal expertise combined with experience at the bargaining table. There is the further advantage that the professional will bring to the table none of the problems of old friendships or antagonisms among the union leadership. Potential conflict of interest may be avoided; while negotiated benefits may be extended to staff excluded from bargaining, including management's representatives at the bargaining table, this will never be true for the outside professional. Normally, the professional negotiator will be solely accountable to the president and the board, and will have no conflicting loyalties to any segment of the institution.

The chief negotiator who is on staff, conversely, should bring a greater familiarity with the university and its history of collective bargaining, as well as a firsthand knowledge of those characteristics of higher education which make universities very different institutions. Unlike the attorney, whose practice and reputation derive from serving many clients, the staff negotiator has only one employer, and should be highly motivated to succeed. Finally, the chief negotiator who expects to be at the university for years to come should have a longer-range view of the bargaining process than the professional whose task is finished when the current negotiations are concluded.

If the decision is to select a chief negotiator from the administrative staff, consideration is usually given to faculty credentials and experience as selection criteria. The theory is that only someone with a faculty background can negotiate knowledgeably and credibly with faculty, while simultaneously protecting the interests of the university. As a staff negotiator with a faculty background, I am unconvinced by this argument. First, faculty do not instantly confer "credibility" upon anyone because he or she holds a PhD or has earned a living in the classroom or laboratory. Further, the causal link between a successful academic career and success in administration is tenuous at best. The faculty experience can be very useful to a chief negotiator in faculty bargaining, but it is not definitive.

Combinations of the professional/staff chief negotiator are common, and perhaps typical. Staff negotiators are routinely assisted through legal consultation, and professional negotiators from off campus invariably work closely with administrative staff who have detailed knowledge of the workings of the institution.

However the negotiator is chosen, and whatever the background and relationship to the university, he or she should have certain characteristics that are well understood. Patience, tenacity, knowledge, loyalty, and honesty are high on the list. Language skills are obviously required, and a thick skin combined with political cunning can be very helpful.

## Designating a Negotiating Team

Once a negotiator has been identified, a negotiating team is selected. Generally this involves four to six people, and they should be chosen with care. If the bargaining is with the faculty, the provost should be centrally involved in selecting the team. Members of the team should represent a cross-section of the various units of the institution, and should be administrators who are well known and highly regarded by the university community. When negotiations work smoothly, these individuals make a number of critical contributions that are not widely appreciated. They evaluate proposals from the informed perspective of how things work—and don't work—at the college and department level. Their support on certain sensitive issues can communicate to the union representatives a level of credibility that a chief negotiator could never achieve alone. They watch the negotiations process much like sports fans engrossed in a football game, providing the chief negotiator with an invaluable ongoing critique of the interaction between the parties at the table. They are an indispensable feature of management's engagement in collective bargaining, and should be chosen with care from the very best people available.

In addition to deans and chairs, many universities send experts in specific areas to the table to offer support. These may include financial specialists, attorneys, or fringe benefit analysts. It has been my experience that it is not an effective use of personnel to ask specialists to serve as regular team members, spending vast amounts of time in negotiating sessions that do not involve their areas of specialization. We consult these individuals away from the table, securing their help in the analysis of issues relating to their expertise, but we use administrative generalists at the table.

## Delineating Responsibilities

With the negotiator and the negotiating team identified, the delineation of responsibilities needs to be determined, reduced to writing, approved by the board, and understood clearly by all who are to be involved. *Figure 1* displays a generic delineation of who does what during collective bargaining. It assumes that the board as a whole will delegate effective authority to make key decisions to a board committee whose purview includes personnel matters. It further assumes detailed involvement by the president on an ongoing basis, described in more detail later. If the negotiations are with faculty, the assumption is that the provost will be totally involved in all decisions, also described in detail later.

Like so much of the activity in collective bargaining, the delineation of responsibilities is a simple matter, but one of critical importance. There is no single "right" way to structure these responsibilities that will work for all institutions, but the structure should be established carefully—and then observed. At larger universities, and particularly at private universities, much

## Figure 1

## DELINEATION OF RESPONSIBILITIES IN COLLECTIVE BARGAINING

| | |
|---|---|
| The Board | will review a tentative agreement, or a third party's recommended final settlement, and will ratify or reject the proposal advanced. The Board will give careful consideration to the recommendations of the Personnel Committee, and—absent compelling reasons for not doing so—will accept the recommendations of the Personnel Committee. In the event negotiations reach impasse and a strike appears likely, the Board will review the situation, including the recommendations of the Personnel Committee, and will direct that the positions maintained by the University be maintained or modified. |
| The Personnel Committee | will review draft goals and objectives recommended by the President and the Chief Negotiator, and will approve them as advanced or as modified. Approved goals and objectives will include specific fiscal parameters within which the Chief Negotiator is authorized to negotiate. The Committee will review administrative summaries of proposals submitted by both parties, and, to the extent the Committee deems it appropriate, copies of the proposals themselves. |
| The President | will review University proposals before they are submitted to the union, and will approve them or direct modification of them. He or she will review reports of progress in negotiations as provided by the Chief Negotiator, and will direct the general course of negotiations as he or she deems appropriate. |
| The Chief Negotiator | will serve as chief spokesperson for the University during the negotiating sessions. Following consultation with the President, appropriate administrators, and the Negotiating Team, he or she will draft University proposals for the review of the President. He or she will report informally to the President at frequent intervals, and provide written reports concerning provisions tentatively agreed to and other significant developments. He or she will draft periodic reports to be forwarded through the President to the Board's Personnel Committee. He or she will provide an ongoing analysis of progress in negotiations, including strategic and tactical actions that need to be taken. |
| The Negotiating Team | will assist the Chief Negotiator in the preparation of University proposals, goals, and objectives; in the analysis of union proposals, goals, and objectives; in the critiquing of progress in negotiations; and in defending the University's position on various issues at the bargaining table. |

heavier delegation below the office of the president is typical, and that can work quite effectively, as long as the implications of delegation are understood and supported.

## Establishing Parameters

Proposing and recommending parameters to govern the negotiations is the next major step. (The lengthy process of gathering and analyzing data is described in the following chapter.) The chief negotiator should write the initial draft of parameters, based upon information available, review it with the team (and the provost, in faculty bargaining), and advance it to the president for review and discussion, and eventual submission to the board's personnel committee. The statement will necessarily be general if it is drafted prior to the university having received the union's proposals, but a week or ten days after receiving the union's package the management chief negotiator and the team should be able to identify all the major issues.

Parameters can be stated in goals and objectives, with goals typically being more general than objectives and more important. Parameters can also be stated positively or negatively, what you will seek to achieve, and what you will refuse to agree to. The two general positive goals will always be to secure an agreement within specifically approved fiscal guidelines and to retain the management rights necessary to operate the institution. The specifics will vary widely from one round of negotiations to the next, and from one university to another.

It can be useful to identify the issues that you believe are critical, which means operationally the issues over which you would be willing to take a strike. Generally these can be identified at the beginning of negotiations, and often even before you receive the union's initial proposals. An early identification of these issues, and a discussion of them with the board, will either confirm that the board and the rest of the management team agree on the importance of the issues, or lead to a modification of the list. In either case, you need to know as early as possible just what the critical issues will be.

A word of caution is in order to the negotiating novice preparing goals and objectives in bargaining for the first time. Do not commit yourself to goals and objectives you will not be able to deliver. Bear in mind that when you and your negotiating team review the existing contract, you will be doing so in the artificially unilateral environment of preparations, and this activity can become an exercise in outlining the agreement as it would read if you had the opportunity to rewrite it without securing the union's agreement. When you enter the negotiations and hear the very different viewpoints of the union representatives, seeing their determination to impose their own vision upon the new agreement, you will be in a very different world. In the drafting of initial goals and objective, it is far preferable for management's chief negotiator to err somewhat on the low side of what can be achieved during bargaining than to secure commitments on certain issues and later have to back down on them.

How detailed should the statement of parameters be? As detailed as the board requires in order to feel comfortable with them. In my experience, one to two pages has generally been sufficient. *Figure 2* displays a generic set of parameters in faculty bargaining; it is probably somewhat shorter than most statements of parameters will be, but it offers an idea of format.

## Summary

This, in outline fashion, is a mode of board involvement that has been successful. I am aware that this approach assumes more detailed involvement by the president and the board than is often the case in higher education. I have discussed this system with counterparts at other universities who have shaken their heads in disbelief, complaining privately that they could not secure detailed guidance from their boards in advance, and that access to the president was always a problem. Two other management chief negotiators have confided that they did not seek or desire involvement by the president or the board until they had reached a tentative agreement, because they wanted to be free of imposed restraints in the negotiating process; neither is still employed as a chief negotiator.

Different universities manage various functions very differently, but in the critically important area of collective bargaining the president and the board should be centrally involved in the process from the beginning to the end.

To summarize the key steps in the involvement of the board in the preparations for bargaining, I would suggest you always take the following steps. Educate the board carefully in the unusual structure of decision-making that accompanies collective bargaining, the necessity of having evaluated and identified the key points in a ratifiable agreement before the negotiations get under way, rather than at the end of the bargaining. Evaluate the nature of the negotiations, and carefully select a chief negotiator who is best suited to accomplish the goals and objectives of the negotiations. Bear in mind always that there are institutional concerns and goals of a long-range nature that will extend far beyond the term of the agreement to be negotiated. Designate a negotiating team that will assist the chief negotiator at the bargaining table, selecting its members from the finest talent available in

Figure 2

## GOALS AND OBJECTIVES IN FACULTY BARGAINING

*Goals:*

1. To secure an agreement that retains the management rights necessary to operate the university.
2. To secure an agreement with a wage package that does not exceed *n*% in salary increases in the first year, and *n-1*% in each of the last two years.
3. To retain administrative control over one-third (1/3) of funds for salary increases, to be awarded by the board as merit salary increases, with no appeal of the decisions to be made.
4. To secure the removal of the department chairs from the bargaining unit.
5. To avoid agreement to the agency fee.
6. To secure agreement by (date specific) without a strike.
7. To maintain *status quo* on all economic issues other than salary.

*Objectives:*

1. To maintain the bar from arbitration of all issues currently so identified in Article *n*.
2. To clarify language concerning workload credit for laboratory assignments in biology and zoology.
3. To maintain present language on Retained Rights, No Strike, and Separability.
4. To add language qualifying the authority of the grievance arbitrator by noting that the arbitrator may not substitute his or her judgment for the judgment of the individual whose decision led to the grievance.
5. To secure an expiration date of (date specific) with no reopeners during the term of the agreement.
6. To delete the provision for peer review in cases concerning Termination for Cause.
7. To avoid inclusion of any reference to "past practice" in the scope of grievable matters established by Article *n*.
8. To avoid the inclusion of other positions in the bargaining unit, specifically adjunct faculty.
9. To avoid released time for union officers to engage in union affairs.
10. To clarify language on faculty schedules to reflect the arbitrator's award in Grievance #145.
11. To secure the right to modify faculty salaries unilaterally in disciplines in which the market creates difficulty in faculty recruitment and retention.

your administration. Delineate the responsibilities of the individuals who will engage in the negotiating process, from the members of the negotiating team to the members of the board. Reduce this delineation to writing, and be certain that all persons involved receive the statement of delineated responsibilities, understand the delineation, and abide by it. Establish parameters for the bargaining, a list of goals and objectives that describes what you want to achieve and what you want to avoid. Reduce the parameters to writing and secure board approval of them, and keep this document at hand as your definitive marching orders for the negotiations. And do not agree to any provision that runs counter to the established parameters unless you have been back to the board and secured authority for the deviation from the original plan.

# 3

# Gathering Data Prior to Bargaining

As a chief negotiator, you will need to gather various types of information before you draft proposed parameters for bargaining or contract proposals for the table.

Spend some time initially designing the process of data collection and analysis: what information is to be sought from which sources, the staff to be involved in compilation and analysis, the schedule of activities related to data-gathering, and the format of final reports. Advance your plan for data collection and analysis to the president (and to the provost, in faculty bargaining) before you start the process, allowing time for raising questions concerning methodology and suggesting alternate approaches. Here, as always, be certain that you are in agreement with the president on the approach to be taken.

If you are approaching negotiations with a mature union with which you have negotiated previously, review the record of prior bargaining to see if there is a consistent union approach to assembling data and presenting it to support the union's position. If the union has a standard approach, be prepared to deal with it.

The activities described in this chapter deal primarily with the negotiation of successor agreements, which invariably begins with the existing agreement as a point of reference; the unique challenges of an initial faculty agreement are discussed in the following chapter.

## Reviewing the Grievance Flow

A review of grievances filed during the term of the agreement is a logical place to begin. Outline each grievance and its resolution, and study the outline carefully. However closely contract language is reviewed by both parties at the table, ratified agreements are subsequently scrutinized by the far larger audience of the bargaining unit and chairs and deans, and provisions are applied or tested in situations not anticipated at the bargaining table. As a result, you will routinely have some problems of clarity to resolve.

In addition to problems of language, look closely for patterns in the grievance flow that may be informative in other ways. Are grievances concentrated in one college or department? Focused heavily on one section of the agreement? Are they numerous or few? Increasing in volume, decreasing, unchanged? Grievances are collectively the major formal indicator of how well or how badly the agreement is working, and generally provide useful information about what administrators are doing effectively, and what needs to be improved.

## Measuring Faculty/Staff Morale

Equally important but much more difficult to measure is the general morale of the faculty or staff in the bargaining unit. This is not so neatly recorded as the grievance flow, but ample indicators are available in the union newsletter, the columns and letters to the editor of the student newspaper, the memoranda that arrive on your desk, the casual conversations you have with faculty and staff, and the grist of the campus rumor mill. Concern for faculty and staff morale should not be limited to the times you are preparing for negotiations, but at that time take a close look at the situation from the perspective of collective bargaining to see what, if anything, it suggests to you in terms of bargaining strategy.

## Reviewing the Agreement

A third useful activity is a careful rereading of the current agreement. It will be difficult to take a fresh look at this document if you have worked with it closely over a period of years, but try carefully to read it as if you had never seen it before, analyzing it in detail for clarity and coherence. (The negotiating team, particularly new members who have not been to the table previously, are of major help on this.)

## Surveying the Administration

Survey deans, chairs, and department heads, the persons who have had the most experience in administering the day-to-day activities of the institution under the agreement. The standard instrument used on my campus breaks the agreement down into summarized articles and subsections, and asks each respondent first to comment on the impact of the provision (positive or negative, major or minor), and second to recommend a course of action relative to that provision (delete it, retain it, or modify it). In addition—and this is important—we ask each respondent to add narrative comments or suggestions. A portion of the survey instrument appears as *Figure 3*. Meetings with deans and chairs may also provide useful information to you from this key group of people.

Assuming you have been administering the agreement during its term, there should be no great surprises in the results of the survey, but be certain that you provide your deans and chairs with a full opportunity to share with you their concerns about the upcoming negotiations. Evaluate their comments with care as part of the preparation for the bargaining table.

## Analyzing Union Preparations

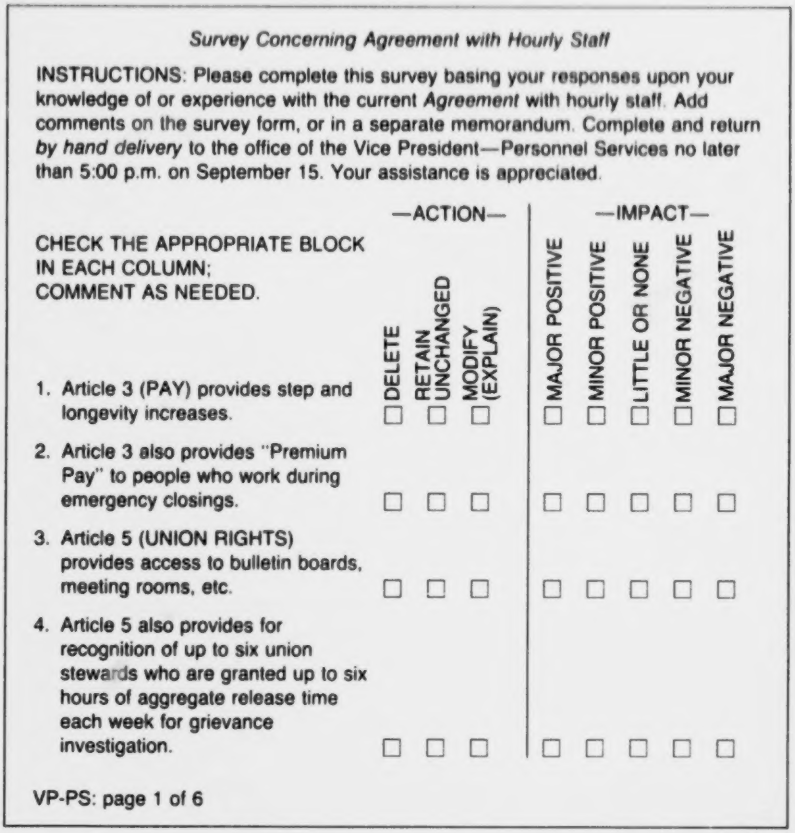
To the extent that you are able to do so, analyze carefully union activities in the early stages of preparation for bargaining. Each party's preparations are confidential, and tend to be tightly protected as such, but numerous bits of information will be available to help you understand what to anticipate in this season's negotiations. Who has been selected to serve on their negotiating team? If they were elected, by what numbers and percentages, and from what slate of candidates? How many members of the bargaining unit are currently authorizing dues deduction? Is there a trend suggesting growth or loss during recent years? Has the union surveyed its membership? Is the union newsletter sounding the usual drumbeat that announces the beginning of bargaining? Is the tone quieter, or even more strident, this year than in previous years? Much of this will be easily discernible, and a preliminary analysis of where the union appears to be coming from will be helpful in the initial development of the management strategy.

## Securing External Data

Finally, some data will be needed from external sources and must be evaluated as part of your initial preparation. For faculty, national salary data

Figure 3

**EXCERPT FROM MANAGEMENT SURVEY**



*Survey Concerning Agreement with Hourly Staff*

INSTRUCTIONS: Please complete this survey basing your responses upon your knowledge of or experience with the current *Agreement* with hourly staff. Add comments on the survey form, or in a separate memorandum. Complete and return *by hand delivery* to the office of the Vice President—Personnel Services no later than 5:00 p.m. on September 15. Your assistance is appreciated.

| CHECK THE APPROPRIATE BLOCK IN EACH COLUMN; COMMENT AS NEEDED. | —ACTION— | | | —IMPACT— | | | | |
|---|---|---|---|---|---|---|---|---|
| | DELETE | RETAIN UNCHANGED | MODIFY (EXPLAIN) | MAJOR POSITIVE | MINOR POSITIVE | LITTLE OR NONE | MINOR NEGATIVE | MAJOR NEGATIVE |
| 1. Article 3 (PAY) provides step and longevity increases. | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| 2. Article 3 also provides "Premium Pay" to people who work during emergency closings. | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| 3. Article 5 (UNION RIGHTS) provides access to bulletin boards, meeting rooms, etc. | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |
| 4. Article 5 also provides for recognition of up to six union stewards who are granted up to six hours of aggregate release time each week for grievance investigation. | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ | ☐ |

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collected through the federal government's Higher Education General Information Services and analyzed and disseminated by the American Association of University Professors will be critical, as it relates to universities comparable to your own. State-wide faculty salary data may also be relevant and useful. Your institution's costs for fringe benefits must be studied carefully, as your concern will be with total compensation costs, not salaries alone. The current rate of inflation is obviously important, as is information on the local cost of living and current data on salaries paid in your area to non-university staff performing duties comparable to members of your bargaining unit. You should also review the current pattern of wage and salary settlements nationally and in your state or region, particularly those involving bargaining units similar to your own. You should also be familiar with the details of salary increases for other bargaining units on your campus, and increases that have been given to staff excluded from collective bargaining.

Comparative data may be available on certain other issues that will be far better understood in light of external comparisons. Gather such information as you can on faculty workload, tuition remission, insurance benefits, and summer teaching opportunities at universities comparable to your own.

## Summary

By way of summary, I would suggest that your data-gathering activities include the following components. Begin your preparatory research by analyzing the types of information that will be needed, sub-divided into that which is already available and that which will have to be gathered. Draft a plan for gathering, compiling, analyzing, and summarizing the results of your research, and secure agreement with the president on the appropriateness of the plan. Analyze the flow of grievances during the term of the current agreement, noting problems of contract language and possible administrative problems. Review what you know about the current state of faculty/staff morale. Review the language of the agreement itself. Survey the deans, chairs, and other members of management who have been engaged in the daily operations of the university with faculty or staff covered by the agreement. Analyze the union's activities and attitudes in the early stages of preparing for negotiations. Secure and analyze available external data on salaries, fringe benefits, and working conditions for faculty and staff at comparable institutions.

When the data has been gathered, the chief negotiator and the negotiating team should review the information carefully. This review should lead to the drafting of the goals and objectives in negotiations, as well as its companion piece, an outline of changes in the agreement to be proposed to the union at the outset of bargaining.

# 4

# The First Faculty Contract

Negotiating an initial faculty agreement is a unique institutional experience, and its importance is difficult to exaggerate. This may be the only occasion when the slate is ever perfectly clean, and management should make its record carefully and clearly. The goals you achieve in the initial negotiations, and the errors you make, may well have a life far longer than the term of the agreement itself.

## Analyzing the Background

Your first task as a chief negotiator should be to review and analyze the situation that led to the pending negotiations. Much of this information will be available to you, but it needs to be organized, reduced to writing, and studied from the perspective of what it suggests about the negotiations.

Did the faculty vote follow a contested campaign between two agents with different ideological positions? Was there a significant movement among the faculty supporting "no representation?" Did the university run its own campaign opposing organization? What were the vote counts, in absolute numbers and as percentages of those eligible to vote? Was faculty support concentrated in certain areas of the university, and if so, where? Does the movement appear to enjoy broad support, or represent the efforts of a small cadre? Above all, what key issues or administration policies and practices apparently provoked or lent support to the faculty vote for representation?

A second part of the initial analysis is a systematic review of existing policies and practices related to faculty personnel matters. You need to be thoroughly familiar with policies in these areas, as well as the provisions of the faculty handbook. Equally important is a close examination of actual practices in these areas; you cannot assume that in all departments and colleges personnel practices have conformed to established policy until you have confirmed it. You may well be surprised, and if so better sooner than later.

The faculty union can be expected to view existing personnel policies as a floor, a base from which to negotiate upward to increased levels of job protection, promotional opportunities, and salary structure. You, conversely, will view parts of the status quo as the desired endpoint of negotiations, other parts as non-negotiable management rights (in the context of collective bargaining), and still other elements as opportunities to clarify or strengthen ambiguous areas of faculty rights and responsibilities. Your necessary first step is to understand in detail existing personnel policies and practices as a point of reference or departure.

## Understanding Legal Obligations

You need also to become immediately and thoroughly familiar with the details of the legal jurisdiction in which you will be negotiating. (Appendix A offers some general suggestions for further reading.) Depending upon the jurisdiction, your obligations and your options will be limited or supported by provisions of law that create obligations and restrictions, while protecting you against some provisions the union may be seeking. Be sure that you understand as fully as possible both your obligations and your rights.

You will need, in essence, a crash course in the law governing the negotiations in which you will engage. Legal assistance in this process is desirable. You need also to become familiar as quickly as possible with the operational aspects of the collective bargaining process. You can learn a great deal of this through reading, but interaction with peers who have already been through the process offers advantages for which there is no substitute.

## The Benefits of Networking

Newly designated chief negotiators often have a sense of apprehension, a feeling that the task before them is an intimidating one filled with risk and unpleasantness, unbalanced by prospects of gain. This uneasiness will be compounded if you are working without the assistance of a mentor experienced in negotiations. (Your colleagues on the negotiating team are a major asset in this regard, but if they share your inexperience, their assistance will be limited.)

Other universities have long been involved in collective bargaining with faculty, and on each of these campuses are staff members who have been through all of the problems you will encounter. If you are not already part of this network, tap into it quickly and establish contact with your counterparts at other universities that most closely resemble your own. It has been my experience that chief negotiators at other universities are remarkably accessible and candid, willing to share fully information and documentation. Your cohorts elsewhere in the profession can be an invaluable source of informal advice and peer support.

If yours is a public university, there is probably a state or regional organization of staff engaged in personnel and labor relations activities in higher education. These organizations are particularly helpful when all the participating institutions are subject to the same law governing negotiations. Private institutions have similar networking organizations, and here too you may find assistance. At the national level there are conferences of people engaged in collective bargaining, and these too can be helpful.

When you have identified a number of universities comparable to your own, and established contact with your counterparts there, secure copies of their faculty agreements and study them carefully. Find out which portions of the agreements are believed to have worked well, and which have created problems. It may be worthwhile for you to visit two or three of these campuses, to discuss in detail the collective bargaining experience from the perspective of the negotiator, the provost, the deans, and the president. If you have an opportunity to talk to the individuals who played the key roles in negotiating the initial faculty contract, ask them what, in retrospect, they wish they had done differently in the first round of negotiations.

## Securing Professional Assistance

If networking is a critical mode of securing assistance in preparation for bargaining, another option to consider is securing professional assistance. I have mentioned the desirability of the chief negotiator having the assistance of an attorney in becoming familiar with the legal jurisdiction that will govern negotiations, and the necessity of a careful legal review of decisions and proposals that relate closely to the provisions of the legal code. In addition, you should consider hiring an experienced university negotiator on a consultancy basis to assist you in some aspects of the negotiations away from the table. An experienced chief negotiator can conduct informal workshops on the negotiating process, offer suggestions on overall approaches, assist in the preparation of management's proposals and the analysis of union proposals, and generally be available for instant consultation when things take a startling and unexpected turn for the worse. (They will.) The total amount of time you will need to utilize such a consultant may be surprisingly small, and the cost will be negligible in the context of the risks involved in negotiating any initial faculty contract.

This approach to negotiations has the advantage of retaining control of the negotiations in the hands of those individuals who know the university best and have a long-term interest and commitment to it, while simultaneously giving you the benefits of someone experienced in the process.

## Preparing Initial Proposals

Having analyzed the events that led to the faculty decision to unionize, familiarized yourself in detail with the legal and operational aspects of collective bargaining, secured assistance from your counterparts and perhaps from a consultant, you and your negotiating team should be ready to prepare the initial set of management proposals.

You are not required to present initial proposals to the union; you may instead accept their proposals as the basis for opening negotiations. To do so is a mistake. If the union's viewpoint is the sole initial point of reference, the union will have staked out the field on which you are to play. The union will have defined the only proposed outline of scope and substance of bargaining, and the strong tendency will be for the bargaining to become a determination of how much of their package they will secure. Do not be in the position of merely reacting to proposals presented to you. Take the offensive from the beginning to define the contract as you would like to see it, and incorporate this view in your initial proposals.

Critical to the preparation of initial contract proposals is a thorough understanding of the scope of bargaining: what you must negotiate, what you may negotiate, and what you should not or may not negotiate. Scope is discussed in Chapter 5.

Your initial package of proposals should generally reflect the narrowest possible construction of what is to appear in the first agreement involving the rights of the union and the members of the bargaining unit; conversely, you seek the broadest possible construction in language that relates to management rights. (By no coincidence, the union's initial proposals will be the precise opposite.) For example, one of your cornerstones will be the reserved rights article, which establishes the principle that the institution retains all legal authority to operate the university, except to the extent that specific provisions of the agreement have modified those rights. This provision should be broad, clear, and unequivocal. By contrast, a grievance—the mechanism whereby questions are raised about the meaning of the agreement and adjudicated—should be defined as tightly as possible, to include only matters specifically addressed by the agreement itself.

Your initially broad proposals on management rights will generally tend to get narrowed somewhat in the bargaining process, and your narrow proposals concerning union rights will be broadened a bit, but your movement in these areas will be the essence of the negotiating process. Always begin with some "room to move" wherever possible. (Salary issues are only the most obvious examples of this.)

A word of caution about initial management proposals is in order. Do not put a proposal on the table that you would not be happy to sign immediately, and do not offer proposals that are unrealistically negative simply in order to create room for subsequent movement. You risk giving the union ammunition to use against you with the membership. A colleague of mine was once pressured to propose a reduction in the number of annual sick leave days from 15 to eight; 15 days leave had been the standard for years, appearing in the statute which predated collective bargaining. In the weeks following the proposal to reduce sick leave, the number of employees authorizing union dues deduction increased by 50 percent. The ratified agreement provided for 15 days of sick leave. A useful test for evaluating draft proposals from this perspective is to envision the proposal published in the student newspaper, or in the union newsletter: would you be comfortable in defending it? If the answer is no, you should reconsider the proposal.

With your initial package of proposals completed, reviewed, and related to the parameters discussed in Chapter 2, you will be ready to go to the bargaining table.

## Faculty/Administrative Relations and the First Contract

An important element in all faculty negotiations, particularly for a first contract, is maintaining or establishing good faculty relations. This may sound paradoxical in the adversarial context of labor/management relations, but representatives on both sides of the table need to understand, and to remember, that they have common cause in finding a resolution of their differences that will not impair the ability of the university to carry on its mission.

If the initial faculty negotiations have followed a bitter campaign, or reflect the culmination of longstanding faculty discontent, reestablishing the proper tone of mutual respect in faculty relations may be a lengthy and difficult process, and may indeed require several years. The process should begin as early as possible, and you should use the negotiating process to pursue this goal.

Do not personalize issues discussed at the bargaining table, and try to dissuade the union's representatives from doing so. Try to avoid lengthy discussions of past faculty grievances, focusing discussion instead on the task of establishing contract provisions that will subsequently govern the issues under consideration. If you become the target of gibes or insults from across the table, do not reciprocate, and be sure that the members of your negotiating team follow your lead. If you learn that members of the administration are causing problems through indiscreet anti-union comments, get to them quickly (or have the president or the provost do so) to be certain they understand that such comments are inappropriate and counterproductive.

Always bear in mind the long-range viewpoint as you work through the process of negotiations. In the short run you are seeking an agreement, but your actions should also reflect your awareness that faculty and administration will need to be working together in pursuit of mutual interests long after the agreement has been ratified—and expired. Maintaining a long-range perspective in the heat of initial negotiations is a trying challenge, but it should be one of the cornerstones in the education of both parties in the collective bargaining process.

## The First Contract as Status Quo

First contracts are of critical importance because of their precedential value. Every subsequent round of negotiations will begin with the existing agreement as the point of reference.

Collective bargaining for faculty may emerge in a flush of excitement among its strongest advocates, a conviction that the old order of administrative authority is to be swept away and replaced with a bright new academic world in which faculty exercise their proper role in the central governance of the university. They go to the bargaining table to secure enforceable contract language to define faculty rights in a legal framework that will not be subject to administrative whim or caprice, and in the process the faculty learn that "to define" means at its root to restrict and to limit. With the ratification of the agreement, the faculty will have precisely what they have secured through contract language; authority in other areas will remain in the hands of the administration, perhaps more starkly so than prior to the advent of collective bargaining.

Members of the administration often go through a parallel educational experience. Some may consider the appearance of faculty unionization in apocalyptic terms, hearing in it the death knell of traditional university life. Fortunately, the administration's worst fears are generally as unfounded as the faculty's brightest hopes. What emerges from bargaining most often is a tightened delineation of rights, authority, and responsibilities, an agreement that provides the faculty with specific benefits and protections while defining with more precision the residual administrative authority.

The first agreement quickly becomes the new status quo, the accepted ordering of administration/faculty relations. All institutions and individuals are to some extent prisoners of the status quo, reluctant to abandon the known for the unknown, the old for the new. ("But we've *always* done it that way!")

Herein lies the critical nature of the first agreement, both in terms of the subjects incorporated as negotiable and the provisions that relate to those subjects. If you err by negotiating on subjects that should have been excluded from bargaining and reserved as management rights, negotiating them out of a successor agreement can be difficult or impossible, because you will then be seeking to "take away" established rights. Conversely, reserved rights and protected management decisions will also find acceptance as part of a new status quo, and your task in retaining these provisions in subsequent bargaining will be made much simpler.

First contracts are of such importance that you should be prepared to go to almost any lengths to secure the proper balance of faculty benefits and management rights. If it becomes clear that a salary package somewhat larger than you had envisioned will secure your goals in non-fiscal areas, the agreement may well be a bargain at the price. If the negotiations defy resolution to the point that a strike is threatened, do not be panicked into capitulating on key issues. An acceptable agreement secured after a bad strike can be far preferable to a bad agreement reached without a strike.

## Time and the First Contract

Finally, time is always an important element in negotiations, particularly for a first faculty contract. Typically, it is a lengthy process, often requiring a year or longer. The amount of time involved may surprise the people on both sides of the table, and invariably there will be a point at which weariness, if not outright exhaustion, will take its toll. You may find yourself privately eager to conclude the ritual of debate and discussion, often at the end marked by interminable repetition.

Do not rush to agreement. Your faculty counterparts will be as subject to the wearing down process as you are, and perhaps more so. (Their constituents are more numerous, and may be asking with greater insistence and frequency why agreement has not been reached.) Remember two simple considerations. Which party has the greater need to reach closure? Almost invariably, the answer is, the faculty. Second, what do you risk by not reaching agreement? Absent a credible strike threat, the answer is typically, very little.

Persevere until you can get an agreement that satisfies your legitimate management goals and objectives.

## Summary

The activities described in this chapter have necessarily been placed in sequential order, but this does not mean that they should be pursued one at a time. Much of the chief negotiator's work moves forward on various fronts simultaneously, as you gather data, meet with people, develop strategy, build relationships, draft proposals, and prepare for the negotiations. A good rule for managing workload in negotiations is that you should complete any task as soon as you have all the information needed to complete it. Bargaining usually involves many scenarios in which complex and time-consuming plans may need to have been finished several weeks ago, in order to have been reviewed and evaluated, to be put into play tomorrow. To the extent possible, do it all as early as you can.

To summarize the key activities and concerns that are of particular importance to negotiating an initial faculty contract, I suggest you begin with a careful review of the events leading to the unionization of the faculty, seeking to understand what you will encounter at the bargaining table and what major problems will require particular attention. Review existing personnel policies and practices. Acquaint yourself as thoroughly as possible with the details of the laws that will govern the negotiations securing legal assistance in the process. Establish contact with the network of other professionals who are engaged in collective bargaining in higher education, and seek their assistance; if feasible, cultivate in more detail a smaller network of individuals whose institutions and responsibilities closely resemble your own. Develop an initial set of proposals that will reflect your view of what the final agreement should be, leaving room for movement on various issues. Try to build positive faculty relations, remembering that in the longer term the faculty and the administration will need to work together in the pursuit of common goals. Remember that the first faculty agreement will be of historic significance to all future faculty bargaining on your campus, as it will embody a new status quo of faculty/administration relations; define its scope and negotiate its provisions with care.

Finally, do not be overly frustrated if the initial negotiations continue for what seems an inordinate amount of time. Your faculty colleagues will also tire, and time will probably be working to your advantage. Don't rush it.

# 5

# The Scope of Negotiations

Subjects of collective bargaining are divided into three categories: mandatory (which the employer must negotiate), permissive or voluntary (which the employer may negotiate, but is not required to), and prohibited or illegal (which may not be negotiated). Like all systems which seek to define phenomena by assignment to category, this one sometimes yields to a stubborn reality that defies categories and slips instead into the grayness of gradation. The two ends of the spectrum are clear, the middle often cloudy. You must negotiate salaries and workload; you may not negotiate away the protection afforded employees under various pieces of civil rights legislation.

## Restricting the Scope

A routine part of negotiations, especially for an initial contract, is the response by management to union proposals on issues on which management is not required to bargain. The critical preliminary evaluation must be to determine whether to accept the proposal as relating to a proper subject for negotiations.

For example, I once received a faculty proposal that would have defined a university liquor policy, giving faculty complete authority to serve alcoholic beverages at any faculty function where they deemed it appropriate. I responded that we were not thrilled by the prospect of the guaranteed right to serve martinis at a 10:00 a.m. department meeting, but more importantly we did not believe we had any obligation to negotiate a liquor policy. The faculty responded that the existing liquor policy, promulgated unilaterally, was restrictive to the point of absurdity, a cause for embarrassment to mature professionals. Pressed on the point, I offered to agree to the following: "No employee shall, as a condition of employment, be required to consume alcoholic beverages." This, I argued, met management's obligation to negotiate "conditions of employment." The faculty did not agree, but the issue fell by the wayside, and no reference to alcohol appeared in the completed agreement.

(Note: questions of the scope of bargaining may be contextual. For brewery workers, who often receive quantities of their product free, as a fringe benefit, the company's beer policy for its employees is presumably a mandatory subject of bargaining.)

Unions routinely seek to define the scope of bargaining as broadly as possible as it relates to union rights; management pursues a narrow definition. A common union proposal asks management to agree to "maintain standards" or "past practices" in effect at the time of ratification. The union argument is that no agreement can address all the details of working conditions, and in those instances in which management has decided to follow certain procedures or grant certain benefits, the union needs protection against unilateral revocation or modification. Such proposals are anathema to management chief negotiators, especially when the language is loosely drawn. Given the decentralized nature of universities, central administration never knows all the details of practices at the department level. To agree to "maintenance of standards" is to broaden the scope of negotiations in ways that cannot be fully understood in advance, and to yield management's authority to correct errors when they surface.

## Exceptions to Limiting the Scope of Bargaining

Occasionally management may find it desirable to broaden the scope of negotiations rather than narrow it. The conventional management wisdom of seeking the narrowest possible scope is often a defensive tactic, a response to union proposals that would take you into areas you do not want to enter, and in this context the conventional wisdom is sound. You may, however, find occasion to take the offensive by establishing detailed contract language that secures objectives desired by management.

Sexual harassment can be such an issue. The range of acceptable sexual behaviors has broadened greatly during the past quarter-century, and over the same period university restrictions on sexual activities have been greatly reduced, in some instances all but abandoned. A possible by-product of greater sexual freedom involves unwelcome or coercive sexual advances. (This is not a new phenomenon, but society's sensitivity to it has increased significantly in recent years.) The problem is particularly troublesome when faculty/student or supervisor/staff relationships are involved. Collective bargaining can offer an opportunity to define with some precision which sexual behaviors are proscribed, and what penalties may be incurred by violation.

Other issues may suggest a management position of broadening the scope of agreement language rather than narrowing it: faculty consulting activities, absence from campus, and accessibility to students are obvious possibilities. You may in fact discover that the environment of collective bargaining, in which the faculty have formally declared their desire to put all issues of working conditions on the bargaining table, provides opportunities to address sensitive issues that have not been dealt with prior to bargaining because of political difficulties.

## The Scope of Faculty Negotiations

The scope of bargaining for university faculty is a major area of collective bargaining that is not only different in higher education, but probably unique. The professional lives of faculty are typically filled with activities and decisions that in any other personnel context would be a matter of non-negotiable management rights. Faculty play major roles in the decisions to hire other faculty, to award them tenure or to separate them, and to promote them. Faculty design the curriculum and often sit on the committees that select presidents, vice presidents, and deans. Faculty exercise great control over their professional lives and their work schedules, and they go about their day-to-day tasks unsupervised in traditional personnel terms. They are seldom thought of as "employees," because in traditional terms they are not; they are at the heart of the university, defining it and sustaining it, practicing their profession with great latitude and discretion.

When faculty organize and come to the bargaining table, they are in the paradoxical position of utilizing a procedure traditionally employed by industrial workers, but utilizing it in a university setting to address the work lives of management level professionals. As the union seeks to negotiate on the governance of the university, management refuses—to the extent that it can—arguing that these issues are outside the scope of negotiations. But management's position is also paradoxical, in that no university administration wants to transform its faculty into a factory-type clock-punching work force, through collective bargaining or any other avenue. Thus the lines are drawn for what is often a major debate in faculty bargaining.

Three examples will illustrate faculty efforts to broaden the scope of bargaining, and in the process inject itself into areas typically considered to be reserved for management. I once received a proposal from the faculty for a system that would provide for periodic and formal evaluation of the "academic deans and other administrators," including "the effects which may be anticipated to result from such evaluation." (The "effects" were never specified, or agreed to.) I have received a proposal to permit administrators outside the bargaining unit to utilize the union grievance procedure on complaints relating to teaching assignments for those administrators. I have seen a faculty proposal to use the grievance procedure to permit the union or any bargaining unit member to grieve and arbitrate disputes growing out of "provisions of the Agreement, Board and administrative policies, past practice which is not superseded by this Agreement, and the law." None of these proposals were accepted. If proposals from both parties are not initially screened from the perspective of the proper scope of bargaining, the only restriction on what may be placed on the bargaining table will be the creativity of the parties.

In the private sector, the United States Supreme Court has largely resolved this conflict, albeit to the great dissatisfaction of faculty unions. In *Yeshiva*, the court held essentially that university faculty who pass certain tests of participation in governance are managerial employees who are not entitled by law to participate in collective bargaining. The primary impact of *Yeshiva* has been to bring to a virtual halt the drive to unionize faculty at mature universities in the private sector, and has led a number of universities to decertify faculty unions which had been certified prior to *Yeshiva*. Secondarily, the decision has probably raised consciousness about the general issue of the scope of negotiations, as well as who may be represented in them. In the public sector, however, the scope of faculty bargaining remains an issue of concern.

## Negotiating on Issues of Faculty Governance

Management has basically three options in dealing with governance issues at the bargaining table. The simplest is to omit any reference to a governance issue in the negotiated agreement, and then to continue the traditional practice of faculty consultation. (If the proposal involves a prohibited subject of bargaining, you should find support for your refusal in the law and at the labor board; if it is deemed a permissive subject, in theory the union generally cannot go to impasse over it, although the union has the right to propose it and argue for it.) The continued collegial participation of faculty in areas not covered by the agreement is common. Thus, one will find few if any negotiated agreements which provide for the selection of deans, but one will routinely find faculty representation on decanal search committees.

The second approach can be considered partial negotiation, and is not uncommon. You may agree to identify the body (e.g., the senate) which will have stated governance authority in a given area, or identify the authority or procedures involved in decision-making related to governance matters, while reserving the right to overrule recommendations emerging from the procedure. The right to overrule such decisions may be barred from grievance arbitration. Thus the governance issue may be "negotiated" in the sense that it is addressed in the agreement, but management's right to make the final decisions is protected against third party review and determination.

The third approach is to negotiate fully on the subject without restriction or reservation, knowing that decisions made in this area will be subject to challenge, review, and determination by an arbitrator. This approach is obviously undesirable in a general sense, as it breaches the wall of management rights. However, a given issue may be so politically sensitive that an agreement cannot be reached without addressing the issue. If that occurs, management must confront the dilemma of either yielding on its refusal to negotiate, or facing the prospect of not gaining an agreement, and then weigh carefully the implications of the choice to be made.

A word of caution is in order on the long-range implications of the negotiability of any given issue. Union representatives, like their management counterparts, are aware that Rome was not built in a day, that neither party ever accomplishes all its goals in any set of negotiations. The union, or management, may agree to resolve an issue by accepting a modest proposal to be included in the agreement as a way of securing a foothold in new territory, an initial position that can be expanded in future negotiations. Union leaders understand that once you have agreed to negotiate any provision on an issue, they have won the redefinition of the question from whether to bargain it to what will be required to settle it, and that is no small victory. On a variety of issues, your agreement to negotiate at all requires crossing a line from which you may not subsequently be able to retreat.

An important dimension of the negotiability of an issue is whether a problem exists that needs attention outside the arena of collective bargaining. Management should always be responsive to problems encountered by faculty and staff, and a refusal to negotiate on a subject does not mean corrective action may not be in order. My discussion with the faculty on the liquor policy prompted a reexamination of it, and led to an information agreement that the policy would be reviewed in detail following the completion of negotiations. This occurred, a liberalized policy was adopted, and no more has been heard about the matter at the bargaining table. To note what should be obvious, continual discussion and efforts to solve problems should be ongoing, not only because it represents sound faculty/staff relations, but because it will reduce the number of problems you will encounter the next time you go into bargaining.

## Summary

To summarize, I believe it critical for management representatives to have a thorough understanding of which issues must be addressed during negotiations, and to evaluate union proposals carefully from this perspective. Move only with caution into permissive subjects of bargaining. On faculty governance issues, seek some method of achieving the contradictory obligations of securing a ratifiable agreement while preserving management's authority to maintain the successful operation of the university. Do not forget, during debates with the union over the scope of bargaining, that problems which surface need to be resolved, even if you consider them nonnegotiable, because to some extent the union's problems are almost always the university's problems.

# 6

# Managing the Management Team

An important element in successful negotiations is the management of management itself. The "management team" in its broad sense comprises the board, the president, cabinet officers, deans, division heads, department chairs, and administrative department heads. Different groups will require different types of attention.

The objective is to mold those individuals charged with making and executing the key decisions into a unified and decisive force that can meet the union's representatives with a consistency and purpose that will lead to successful completion of the bargaining. It is highly desirable that management be united by consensus, an informal agreement among those involved as to the course of action to be pursued and the positions to be advanced on specific issues. It is worth a good deal of effort and compromise to achieve such a consensus. If consensus cannot be reached after proper deliberation and discussion, however, authority must be invoked and decisions must be made and accepted. The key players must understand that the decisions are to be accepted, and if not explicitly supported, at the very least must go unchallenged outside the privacy of confidential discussions of management staff. Negotiations on the management side are not ultimately governed by the democratic vote of any group other than the board.

## The Problem of Divisiveness

Divisiveness may create many problems. On critical issues, divisiveness is by definition a weakness, an inability to fulfill the primary responsibility of collective decision-making. In extreme cases, the result is indecision, and the paralysis that may follow the inability to establish a position. This can occur to the union as well as to management, and nothing is more frustrating for a chief negotiator representing either party than trying to negotiate with a counterpart whose constituency cannot collectively decide what its position is to be. Such indecision invites contempt. Divisiveness also undermines your credibility on other positions you have taken; if management is badly split on Issue A, the union will wonder if you are really firm on Issues B, C, and D. If a divided management includes vocal supporters of a position similar to that held by the union, do not be surprised to see union leaders executing the "end run" by going directly to members of the board or the administration who are perceived to support the union's position. The goal will be to build support wherever it can be found; the result will be damage to management's structured approach to negotiations, and perhaps even greater management disunity. Finally, a major problem of management divisiveness can lead to the politicizing of management's internal decision-making process. If management finds itself evaluating options first from the perspective of what compromise will be acceptable to competing factions within its ranks, it will no longer be asking the proper primary questions.

To the extent possible, unite all the individuals on the management team as tightly as possible on the overall course of action to be followed, and make every effort to keep them united through the bargaining process.

## The President and the Board

I have described earlier the careful work that needs to be done in order to prepare the board for the negotiating process and to secure from it approved parameters within which to negotiate. With this in place at the outset of negotiations, the president should consider what will be required to keep the board informed and adequately involved as the bargaining progresses. The answer will be determined in large part by the size, the structure, and the preferences of the board, and by the nature and frequency of interaction between the president and the board. Communication with the board requires careful and continual attention. Do not prepare your board members in detail for the bargaining, only to forget about them until you have reached an agreement or gotten into trouble. Keep them with you.

## The President and the Chief Negotiator

The pivotal relationship in bargaining is that between the president and the chief negotiator. Here too candid consultation is necessary, followed by a clear communication of expectations from the president. The president is entitled to the services of a chief negotiator who will work diligently to secure an agreement within established procedures and parameters; who will be carefully loyal, in the sense of never undercutting the president in dealing with the union; and who will keep the president fully informed on all aspects of bargaining. For this to occur, the president must give the chief negotiator broad trust and significant latitude to do the job. (How much latitude the chief negotiator is to be granted needs to be understood precisely at the beginning of the negotiations.) The chief negotiator, in turn, is entitled to a president who will consider carefully the position of the negotiator on all issues related to bargaining; who will establish and communicate with precision what is expected in the negotiations; and who will support the chief negotiator so long as he or she is following the approved course of action. The chief negotiator must remember in general that he or she is not an independent contractor, but a staff member whose task in no small measure is to turn in a performance that will please the president. If not tended carefully, the relationship between the president and the chief negotiator can sour very quickly in numerous ways, at great risk to the success of the negotiations. To say that continual and detailed communication between the two should be part of the negotiations is to understate the obvious.

Major disagreements between the president and the chief negotiator should be avoided to the extent possible. Occasionally, however, this may not be possible, and the chief negotiator may be directed to go to the bargaining table to advance a position he or she is convinced is unwise. If you encounter this problem, explore alternate approaches to the issue under consideration; almost invariably there are multiple solutions to any problem, and with luck you will find one that is mutually acceptable to the president and to you. If you cannot identify an alternate approach that is acceptable, you must evaluate your objections carefully and choose one of two options. You can suppress your sense of opposition and follow the president's directive, or you can remove yourself from the negotiations. There is no third course of action available. I have known negotiators who have identified a third option and signed tentative agreements that violated clear presidential directives; they are no longer employed as chief negotiators.

## The Chief Negotiator and the Provost

Uniquely important to faculty bargaining is the relationship between the chief negotiator and the provost. In my experience it has been a completely open, triangular relationship with the president, the provost being included in all major discussions and receiving all information related to negotiations. It has been understood that the chief negotiator and the provost are co-equals both in reporting relationship and access to the president, but on matters of academic policy the chief negotiator is functionally a staff subordinate to the provost, as well as to the president. On a host of details the provost and the chief negotiator need to be in quick agreement as negotiations proceed; differences that cannot be resolved between them should be taken to the president for a speedy resolution. The provost (and the deans) represent the chief negotiator's third constituency, and must be served carefully. It is possible for a chief negotiator to work successfully with the union in a fashion approved by the board and the president, while simultaneously alienating academic administration; if this occurs, the chief negotiator will be in serious trouble very quickly.

## The Negotiating Team

Members of your negotiating team must understand precisely how they fit into the scheme of things. They cannot function effectively if they do not understand precisely what their role is, including the basic elements of responsibility and accountability. On my campus, it is understood that their role is that of an institutional ad hoc committee on bargaining as it applies to a single set of contract negotiations; they are charged simultaneously with reviewing and recommending changes in policy provisions related to and contained in the agreement, and engaging in the process of negotiations. It is also understood that the role of the negotiating team is finally advisory, and because of that limitation they will not be held accountable if their good faith efforts do not lead to success at the bargaining table. It is as unfair as it is illogical to send a negotiating team of academic administrators to the bargaining table without giving them authority to define the parameters of the negotiations, and then to hold them accountable for failing to convince the union to agree on management terms. The chief negotiator is the focal point of accountability for the success or failure of bargaining, and this needs to be clearly understood.

## Deans and Chairs

Deans and chairs are as critical to faculty bargaining as they are to all other aspects of university administration. Chapter 3 discussed the necessity of consulting them in detail prior to the beginning of negotiations. Chapter 8 offers suggestions for maintaining communication with deans and chairs during the negotiations process, and Chapter 18 discusses support services that should be provided for deans and chairs on an ongoing basis following ratification of the agreement. Their participative role during the course of negotiations will necessarily be limited. However, they are a critical element in the preparations, and they are never to be forgotten in the process of negotiations, as they are the individuals who will feel the primary impact of most of the provisions of the agreement.

## Middle and Lower Management

Middle and lower management staff present unique challenges, particularly in bargaining with non-faculty units. They often feel somewhat alienated by the process of negotiations, realizing on the one hand that they themselves are not permitted union representation, believing on the other that they are not kept fully informed by the central administration, or adequately consulted by it. Over the years I have been periodically accused, somewhat in jest, of engaging in the Mushroom School of Management: keep them in the dark and feed them manure. Behind the humor of this ancient gibe is the sense of middle management that the unionized work force has made management more difficult, introducing rigidity and restrictions that did not previously exist. In turn, middle management's authority is restricted, but the expectations of performance remain unchanged. Much of this is generally accurate, as making life easier for management is seldom a goal in union organizational drives, and employers will seldom willingly reduce their level of expectations simply because of unionization.

The central administration should do what it can to involve middle and lower management staff in negotiations, to the extent this can be done without interfering with the negotiations process. However, it is simply not feasible to inform and consult with this group on a continual basis to the extent they often desire. You should, as discussed earlier, survey this group prior to the beginning of bargaining, and study carefully the information they give you; you should have representation from this group on the bargaining team; and you should inform them quickly of pending problems that are major, or of the terms of a tentative agreement once it has been reached. Beyond that, you hope that middle and lower management staff will appreciate the difficulties of the negotiations process and support your efforts.

## Authority and Accountability in Negotiations

Running through all these relationships, and shaping them, is a strain, a pressure that is imposed by the nature of bargaining. Most administrators believe in the value of participative decision-making, and believe that they practice it to some degree. In most situations other than bargaining, when an institution is not compelled to take a specific course of action within a specified time frame, the possibilities are much greater for sharing the decision-making process on matters of policy development, for extensive and open discussion of alternate approaches to a problem. Collective bargaining, however, obligates the employer to confer with an adversarial agent and to reach mutual agreement with it on a number of complex and difficult issues. The penalties for failure to meet that obligation in a timely fashion—a strike, or perhaps worse, a bad agreement—can be severe, inflicting major damage on the institution. The "employer" who is subject to the legal obligations imposed by bargaining is, in a legal sense, the board; in an administrative sense, the president; and, functionally, the chief negotiator who is sent to negotiate. The responsibility, the authority, and the accountability for bargaining ultimately cannot be shared or delegated further. This necessitates a more authoritarian approach than would be otherwise desirable.

## Summary

To summarize, I would suggest that it is critically important that you develop an approach that defines in some detail which individuals and entities are to play what roles, and to make a continual effort to keep the management structure intact as you proceed with the negotiations. Unity is of critical importance, and if it cannot be achieved through consensus it must be imposed by authority. You cannot afford the many problems of a badly divided management. Be certain that the relationships between the president and the board, the president and the chief negotiator, the chief negotiator and the provost, the chief negotiator and the negotiating team, and the central administration and management staff are all clearly defined and understood. Remember the obligations that the duty to bargain imposes upon the university, and do not hesitate to invoke the authority that may be required to permit you to fulfill that obligation.

# 7

# Managing Time in Negotiations

Time touches all of the activities that together make up the negotiations process, and like all resources it should be managed carefully.

## Long-Range Planning

Multi-year planning is highly desirable when possible, although in collective bargaining it is difficult to make trustworthy projections for any period beyond the expiration of a given agreement. Assuming that you are dealing with a number of bargaining units, a goal in all negotiations should be to achieve and to maintain a multi-year schedule of negotiations that relates most effectively to other events, cycles, and activities that can be projected over a period of several years. This includes relating negotiations to a pattern of effective workload distribution for the chief negotiator and his or her staff, as well as avoiding the simultaneous expiration of two or more union agreements (more on this later). Thus it is desirable to know at any point what the negotiations schedule is for the next two or three years, and to have in place at least a rudimentary plan of how to deal with the sequence of events.

Approximately a year before the expiration of an agreement, you should plan in outline form the sequence of events that is to follow: who will presumably go to the table, what the major issues are likely to be, and what the timelines will be. *Figure 4* suggests a general sequence of preparations for the negotiations, and it is helpful to adapt a plan that addresses these activities for each round of bargaining. *Figure 5* outlines such a plan, from the perspective of eight months prior to the expiration of an agreement. I have done many of these plans, some in great detail, and the negotiations have never unfolded just as projected. But however flawed a specific plan, there is no substitute for planning as a method of imposing some measure of control over events by designing with care and in advance the pattern you hope to see occur.

## Time Constraints in the Law

Legal time constraints may be a significant element in the management of time in negotiations, depending upon the jurisdiction. Ohio's public sector bargaining law, for example, mandates a tightly defined sequence of events over the 60-day period preceding the expiration of an existing agreement and the 90-day period following the beginning of negotiations for an initial agreement. The statute details a sequence of negotiations, mediation,

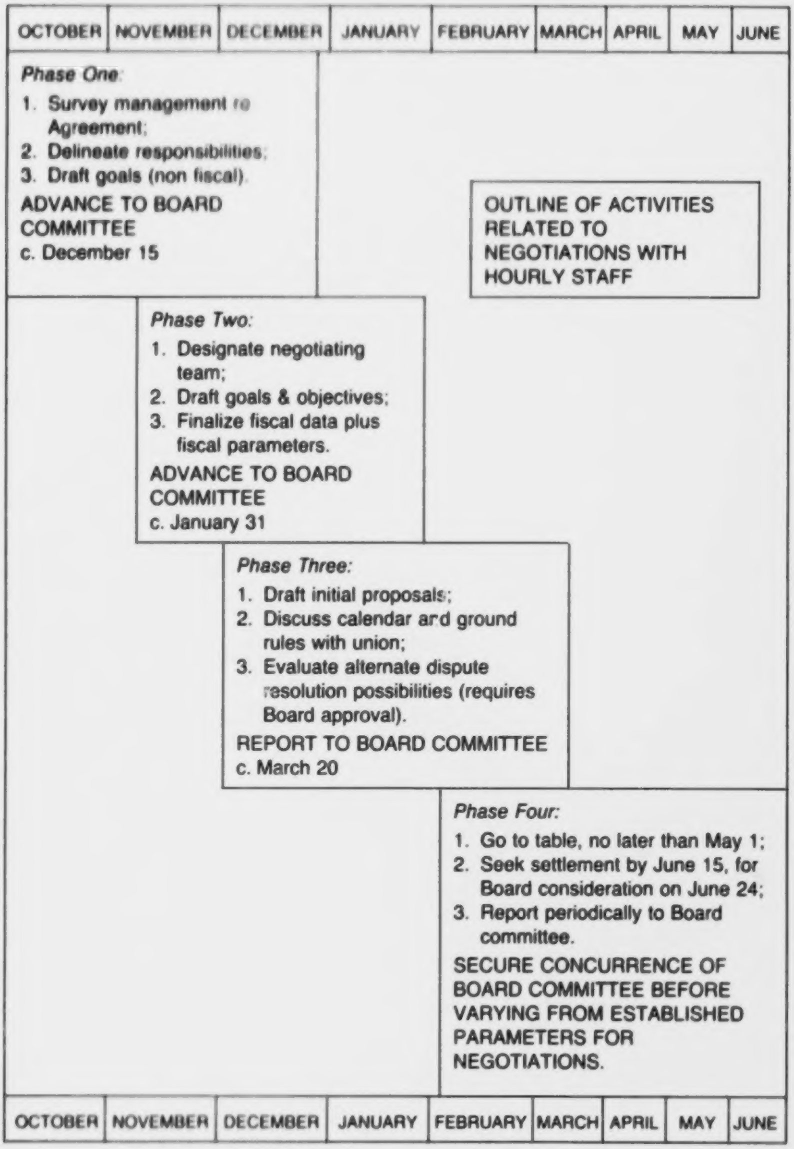
Figure 4

**STANDARD TIMELINES IN BARGAINING**

| Time Frame (Prior to end of agreement) | Activity | Those Involved |
|---|---|---|
| One year | Outline planning for negotiations: assignments, issues, timelines. | President, chief negotiator. |
| Six months | More detail on above. | President, chief negotiator. |
| Four months | Negotiator and team designated, parameters drafted, strategy outlined. Initial proposals completed. | Chief negotiator to president to board. |
| Four months | Discussion with union representatives concerning details of schedule for negotiations. | Chief negotiator, union representatives. |
| Four to two months | Negotiations underway. | Chief negotiator, team, union representatives. |
| One month | Strike contingency plan complete. | Chief negotiator, team, president, staff, board if necessary. |
| Zero | Agreement—or other contingency plans in place. | All of the above. |

Figure 5

## SAMPLE NEGOTIATIONS PLAN



OUTLINE OF ACTIVITIES RELATED TO NEGOTIATIONS WITH HOURLY STAFF

*Phase One:*

1. Survey management re Agreement;
2. Delineate responsibilities;
3. Draft goals (non fiscal).

ADVANCE TO BOARD COMMITTEE
c. December 15

*Phase Two:*

1. Designate negotiating team;
2. Draft goals & objectives;
3. Finalize fiscal data plus fiscal parameters.

ADVANCE TO BOARD COMMITTEE
c. January 31

*Phase Three:*

1. Draft initial proposals;
2. Discuss calendar and ground rules with union;
3. Evaluate alternate dispute resolution possibilities (requires Board approval).

REPORT TO BOARD COMMITTEE
c. March 20

*Phase Four:*

1. Go to table, no later than May 1;
2. Seek settlement by June 15, for Board consideration on June 24;
3. Report periodically to Board committee.

SECURE CONCURRENCE OF BOARD COMMITTEE BEFORE VARYING FROM ESTABLISHED PARAMETERS FOR NEGOTIATIONS.

and fact-finding, which culminates in advisory interest arbitration. The external time constraints applicable to a given set of negotiations must be considered carefully.

## Securing Long-Term Agreements

The duration of a given agreement is the key element to be negotiated that will have a major impact on the institution's overall management of time in the area of labor relations. There is no standard term for an agreement, although two years and three years are most common. In some jurisdictions there is a restriction on term of agreement; in Ohio, for example, three years is the maximum duration. The conventional wisdom among management chief negotiators is that one should seek the longest agreement possible, in order to secure stability and to avoid, for as great a period as possible, the tensions and risks of reopening the agreement. This is generally sound advice. Sophisticated union representatives often share the desire for lengthy agreements, understanding that the stability resulting from relatively infrequent negotiations has significant advantages for the union as well as for management. This is particularly true of unions that send salaried staff members to the table as chief negotiators, for the union's management—as all management—seeks efficiency and economy in operation.

## Limitations on Reopening Negotiations

Lengthy agreements, however, may require larger salary increases than otherwise would be required to secure union acceptance. In some situations, fiscal uncertainties or a volatile rate of inflation may make it impossible to agree to a multi-year wage package, even though both parties may want a multi-year agreement. A common compromise in this situation is the multi-year agreement combined with one or more "wage reopeners" during the term, that is, agreement to negotiate salaries only at a stated time for stated periods, leaving the rest of the agreement intact. While this may be the best deal that can be made, wage reopeners can be difficult and frustrating. When salaries are the only issue on the table, there is little opportunity for either party to package an offer that gives the other party concessions in one area in return for agreement in another. Wage reopeners provide an additional interesting problem for unions, particularly faculty unions. Money is naked, and if salaries are the only issue on the table, it can be difficult for the union to argue convincingly to its constituency or to the public that it is pursuing idealistic goals related to the quality of higher education.

A variant of the wage reopener is agreement to reopen salaries plus a small number of additional articles at a specified time during the term of agreement. Reopeners can be limited in several ways. The parties may agree, for example, to reopen negotiations on salaries and two or three articles that are identified in advance by the parties. Or they may agree to reopen salaries and two or three articles to be designated by each of the parties at the time of the reopener. The limited reopener has the advantage of avoiding renegotiation of the complete contract, and the fact that it is somewhat broader than salaries may make it sufficiently attractive to gain acceptance.

## Establishing Expiration Dates

The expiration date of the agreement is also important. During certain periods of the year, the university would be damaged more severely by a strike than at other times. If, from this perspective, the beginning of fall term is the most vulnerable point, avoid it as an expiration date if at all possible. An expiration date in June has the logic of coinciding with the end of the academic year as well as the fiscal year, and it has the additional advantage of permitting you to have a new agreement securely in place well before the coming fall term. If you have failed to reach agreement by June, you will have the summer months to solve the outstanding problems.

If at all possible, you should avoid agreeing to simultaneous expiration dates for agreements covering different bargaining units. (This is probably impossible on some highly organized campuses, which may have as many as twenty separate units.) Staggered expiration dates are particularly desirable when separate units work closely with each other and share affiliation with a parent organization. Such bargaining units will routinely seek simultaneous expiration dates, because they will understand that their combined clout at any one time will be far greater than the influence they can exert individually at separate times. Assuming each agreement contains a provision that bars strikes during its term, associated unions cannot go on strike at the same time—or effectively threaten to do so—unless they have secured simultaneous expiration dates. Management's interest in avoiding this is both obvious and compelling. To put it bluntly, if you agree to a series of provisions that permit organized faculty and staff to unite at one time with the right to call a combined strike, you have handed a gun to the collective leadership of the unions, and you should not be surprised when it is put to your head.

## Scheduling Negotiations

Time management extends to the mundane matters of when to bargain: at what hours, for how long, at what frequency. This must be worked out with your union representatives, and should reflect whatever works best. Sessions of four to five hours on one or two afternoons each week seem to work best on my campus. If you meet less frequently than once a week, it is hard to maintain continuity of discussion; if you meet more than twice weekly, there are problems with keeping current in the ongoing consultation with the president, as well as the preparation needed for negotiating sessions—not to mention other duties. Evening and weekend sessions can be fruitful, as people do not come to them from direct preoccupation with other tasks. It may be difficult to schedule sessions at such times, but you should make the effort. Avoid "marathon sessions" that run through the night and into the next day; almost no one is able to think clearly and reason effectively over a twenty-four or thirty-six hour period. Sessions of this length tend to shorten tempers and strain relationships, and the possibility of making serious errors increases for both parties with every grinding hour that passes.

Finally, time often functions as a major force of leverage in moving one party, or both, to reach agreement. This aspect of negotiations as it relates to initial contracts is discussed in Chapter 4, and, in more general terms, in Chapter 16. Here it is sufficient merely to note that in any round of negotiations there will be points at which time is of critical importance to the union, or to management, or to both. Your task as chief negotiator will be to recognize these situations, to analyze them carefully, and to seize any available opportunity to manage the time element as part of your overall effort to secure an agreement on acceptable terms.

## Summary

Thus, to summarize on time management, I recommend that you plan the negotiations as carefully as possible over a multi-year period and in more detail for each set of negotiations, massaging the plan as frequently as necessary as you go along. Know in detail any externally imposed time constraints, and build these into the plan. Seek the longest term of agreement available each time you negotiate, and identify an expiration date that minimizes the problems of strike potential at expiration. If necessary, consider the possibilities of combining a long-term agreement with a limited reopener. Secure and maintain staggered expiration dates for different bargaining units, dates that relate to your multi-year negotiations schedule. Work with your union counterparts to find the most effective schedule of bargaining sessions. Bear in mind that time may be a major point of leverage in the negotiations process. Avoid all night "marathon sessions"; management of your personal time should allow for you to be in bed soundly asleep well before midnight every evening during the negotiating season.

# 8

# Managing Communications During Negotiations

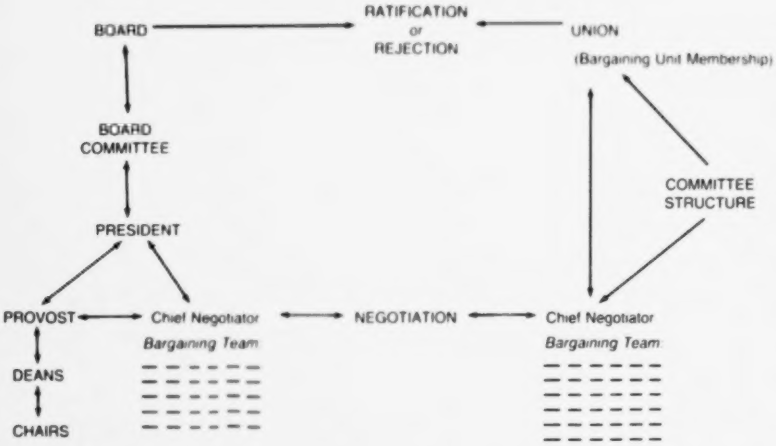
The timely sharing of adequate information with appropriate individuals is always a mark of effective administration, but nowhere is it more critical than in collective bargaining. Bargaining adds the challenge of certain documents that are confidential in nature, requiring systematic protection against disclosure to the other side.

## The Structure of Management Communication

The structure of communications is important in bargaining, and it is essential that everyone on the management team understand that structure. *Figure* 6 displays the standard lines of communication, based upon organizational structure. On the management side, communication flow assumes the usual hierarchical relationship, moving upward from chairs to deans to the provost. It assumes the triangular relationship of the provost and the chief negotiator to the president, each of the three equally accessible to the other two. From the president the line of communication moves to the board's personal committee, and from there to the board as a whole. The management negotiating team offers counsel to the chief negotiator, and through him or her to the provost and the president. The management chief negotiator, in turn, is the sole line of communication to the union's chief negotiator.

Figure 6

**LINES OF COMMUNICATION IN BARGAINING**


BOARD
RATIFICATION or REJECTION
UNION
(Bargaining Unit Membership)
BOARD COMMITTEE
COMMITTEE STRUCTURE
PRESIDENT
PROVOST
Chief Negotiator
*Bargaining Team*
NEGOTIATION
Chief Negotiator
*Bargaining Team*
DEANS
CHAIRS

Everyone on the management team needs to understand that (1) the substantive deliberations on bargaining and the establishment of positions emerge only from the standard pattern of relations; and (2) the chief negotiator is the only conduit of communication to the union. These restrictions mean that the key players must agree on the basic structure of decision-making and communication, and conform to it through the negotiations. Havoc will result if the president independently concludes halfway through negotiations that the university's position on tenure is inappropriate, and explains why directly to the union's chief negotiator. You will be in deep trouble if your council of deans goes on record in support of the union's wage proposal. You will undercut your president dangerously if you bypass him or her and the provost to go directly to the board to advocate a variant position in negotiations. You will be at considerable risk if you discover that board members are evaluating the negotiations on the basis of casual conversations with members of the faculty.

These restrictions do not constitute a "gag rule," and respect the interactions various members of the university community normally have with each other. Certainly it does not mean an oath of silence for the negotiating team members at the bargaining table. It does mean, however, that no institution can be effectively represented by six voices speaking on the same subject, either sequentially or simultaneously, to one audience or to several.

Years ago I sat in a meeting of tense and embarrassed individuals who had been called together reluctantly by the president. He had been petitioned by this group of chairs, who were displeased by a turn in the negotiations, and he listened uneasily to their concerns, seeking a way out of what was clearly a dilemma. The chief negotiator was present, largely silent and obviously defensive, as was the provost, who had also been bypassed. Predictably, the union heard of this meeting very quickly, correctly reading it as a challenge to the management chief negotiator's position and an indication of some disarray in management's ranks. A resolution to the specific problem was found, and the bargaining moved forward, but the potential for damage to the management structure was obvious.

## Confronting the "End Run"

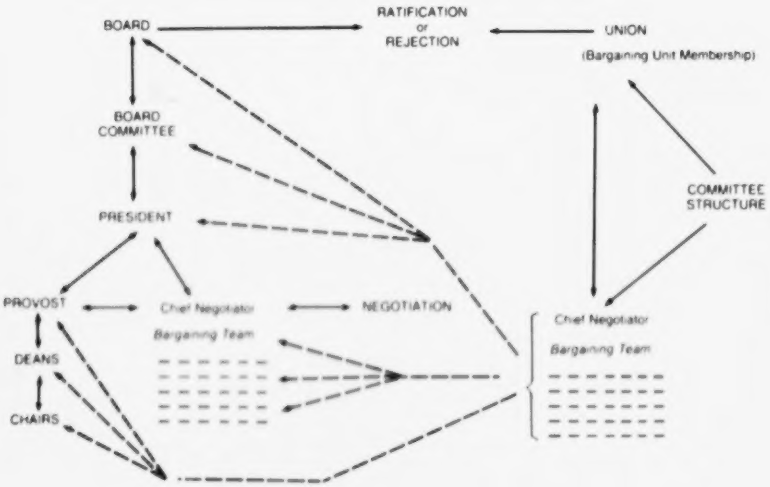
If keeping the communication lines straight within management is a challenge, maintaining the position of the chief negotiator as the only channel of communication to the union may be impossible. It is common in faculty bargaining for the union leadership, at a certain point of frustration in their inability to get what they want from management's chief negotiator, to go around the negotiator and try direct contact with others on the management team. This is called the "end run," from the play of the quarterback who chooses to avoid the line and instead move the football around it. *Figure* 7 illustrates the end run in broken lines superimposed upon the *Figure* 6 display of the standard lines of communication. The tactic is in its more blatant forms a failure to bargain in good faith, and may well represent an attempt to undercut management's chief negotiator. The tactic is irritating to management representatives, to say the least, and it is also potentially disruptive to the negotiating process.

I once watched a set of negotiations completely collapse because this tactic was used and backfired. The union's chief negotiator found an opportunity to discuss the negotiations informally with a member of the board, and poured forth his complaints about the intractability of management's chief negotiator. The board member was politely unresponsive, and tried to brush the matter off with an innocuous comment: "These things work out eventually." From this observation, little more than "Have a nice day," the union's chief negotiator drew several inaccurate inferences and followed a course of action that almost led to disaster. This thing worked itself out eventually, but we would all have been better off if the standard lines of communication had been observed from the beginning.

Management's response to the end run is simple. Everyone involved needs to understand the tactic and the problems it can create, and to recognize

**Figure 7**

**"END-RUNS"**


BOARD
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Bargaining Team

the tactic at once. The best response for the board member or administrator who is approached is to say simply "This conversation is inappropriate, and I will not continue it." The approach should be reported immediately to the president or the chief negotiator.

A tactic closely related to the end run is the maneuver of "isolate and undercut," a variant of the ancient move to divide and conquer. Where the end run assumes management's chief negotiator is the problem, and seeks to bypass him or her, the attempt to "isolate and undercut" reflects the union's assumption that another key management figure is the problem that needs to be neutralized: the provost, the president, or one or more board members. In both tactics the union believes that its problem is an obstructionist whose opposition to union goals can be overcome by appealing to a broader base of the individuals who exercise authority in guiding negotiations.

Union leaders are usually wrong in believing that management's position on any issue is dictated by one person, because extensive discussion of the issues precedes negotiations, typically resulting in consensus. However, it is a routine practice for each party to keep the other in the dark about individual viewpoints, and certainly management should do so. Individuals on the management team are entitled to complete protection against union awareness of the viewpoints advocated. To reveal this information to the union would diminish candor, and possibly expose dissenters to public criticism or attack by the union. In any case, you are never required to reveal these details.

## Communicating with the Provost and the President

Let me turn now from the overall structure of communication to some of the details concerning communication among various individuals and groups in the bargaining process.

Communication from the chief negotiator to the provost and the president, and back, needs to flow continuously during faculty bargaining, often on a daily basis, and in a variety of formats. Verbal reports and informal discussions, with all three present when needed, are obviously desirable and beneficial. Copies of all proposals submitted by either party must be provided promptly to the provost and the president. Here, as so often, the chief negotiator can and should speed the communication process by providing summaries and various visual aids to understanding. If the union gives you 150 pages of initial proposals, spend a few hours preparing an outline that summarizes, article by article, the key points in the package, relating specific proposals to existing contract language and to management's position on the issue. Place the summary on top of the union's package as a table of contents and executive summary. (An excerpt from such a summary appears as *Figure 8*.)

Two other standardized written communications can be very helpful in moving the process forward and recording what is happening. Summary memoranda on a course of action planned for a given negotiating session, noting the articles to be discussed and the approach to be taken, are helpful as working papers for brief conferences with the president before going to the table. Similarly, a "Report on Article Initialled" can be useful to record sign-offs with the union, and advise the provost and the president of them. For this purpose, I use a simple one-page form, essentially an oversized transmittal slip. It identifies the document being forwarded, contains a block for comments, and serves several purposes; it records and reports the sign-off, relates it to parameters and/or discussions, records any point of intent that may not be self-evident, and documents compliance with established procedures. (This form appears as *Figure 9*.)

Narrative analyses are also helpful periodically: "white papers" on complex issues that are not easily resolved, detailed examination of statistical data, and overviews of progress in bargaining (or lack of it).

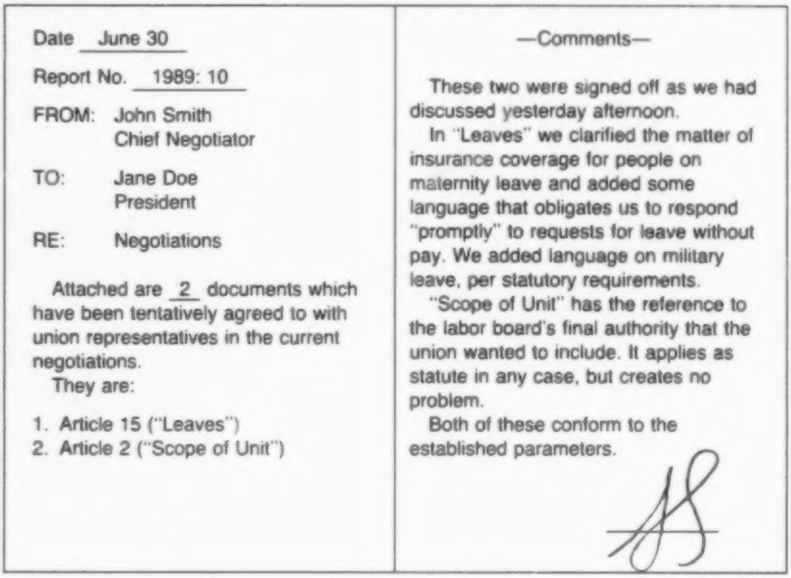
## Figure 8

# EXCERPT FROM OUTLINE OF INITIAL PROPOSALS

| **Article and Summary of Provisions of Current Agreement** | **University's Position** | **Union's Position** |
|---|---|---|
| 1. "Agreement and Recognition" defines the *Agreement* and recognizes the union as exclusive representative. | *No change.* | *No change.* |
| 2. "Scope of Unit" defines bargaining unit to include full-time faculty and part-time faculty teaching more than .5 FTE. | *No change.* | They seek to include chairs and librarians holding faculty rank. |
| 3. "Term of Agreement" specifies a 3-year duration, with no reopeners. | 3 years, with no reopeners. | 1 year. |
| 4. "Pay" establishes | | |
| a. annual increases | a. 3.5%/2.5%/2.5% | a. 9.5% |
| b. increment for completion of doctoral degree of $2,000 | b. $2,000 | b. $5,000 |
| c. promotional increment of $1,500 | c. $1,500 | c. $3,000 |
| d. Overload pay at $500 per hour | d. $500 | d. 3% of salary base |
| 5. "Insurance Benefits" defines eligibility for participation in group insurance program and outlines benefits. | Increase single/family deductible on major medical from $150/$300 to $250/$400; otherwise *no change.* | They seek an increase in benefits in the dental program (no maximum on orthodontic treatment); an increase in benefit levels for psychiatric treatment from current annual maximum of $500 to $1,000; a vision care program. (*N.B.*: the fringe benefits people are doing a cost analysis of this article.) |
| 6. "Retirement" provides for | | |
| a. mandatory retirement at age 70 | a. *No change.* | a. They seek to abolish mandatory retirement. |
| b. cash conversion of accrued but unused sick leave, up to a maximum of 50 days. | b. *No change.* | b. They seek to increase this to 100 days. |
| c. continued use of office (if space is available) and continuation of specified privileges. | c. *No change.* | c. *No change.* |

Figure 9

## REPORT ON ARTICLE INITIALLED



Date June 30

Report No. 1989: 10

FROM: John Smith
Chief Negotiator

TO: Jane Doe
President

RE: Negotiations

Attached are 2 documents which have been tentatively agreed to with union representatives in the current negotiations.

They are:

1. Article 15 ("Leaves")
2. Article 2 ("Scope of Unit")

—Comments—

These two were signed off as we had discussed yesterday afternoon.

In "Leaves" we clarified the matter of insurance coverage for people on maternity leave and added some language that obligates us to respond "promptly" to requests for leave without pay. We added language on military leave, per statutory requirements.

"Scope of Unit" has the reference to the labor board's final authority that the union wanted to include. It applies as statute in any case, but creates no problem.

Both of these conform to the established parameters.

Invariably the question will arise as to how much information should be shared with the provost and the president; the answer is all of it, unless they expressly tell you otherwise.

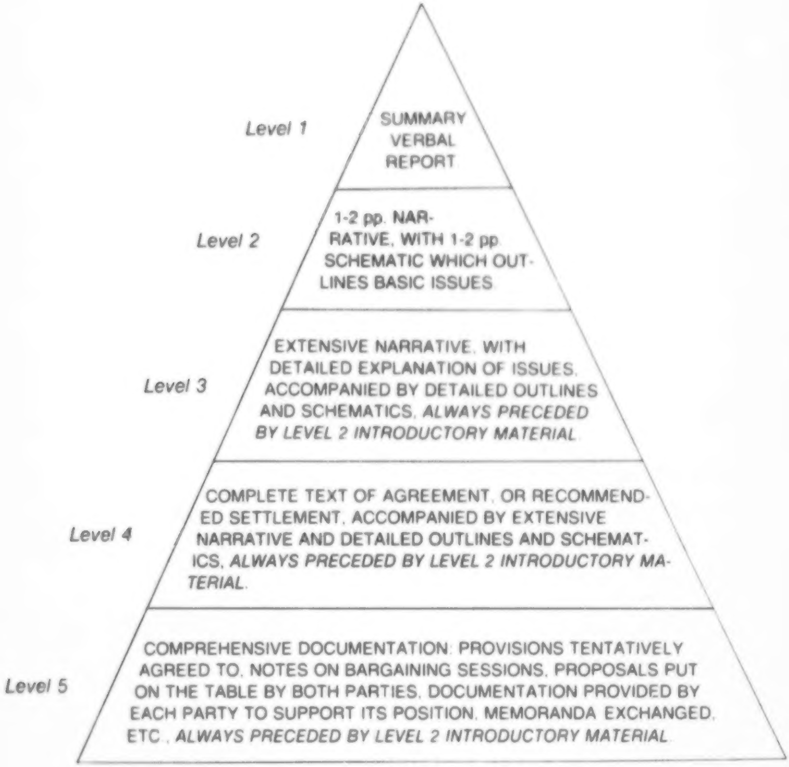
## Communicating with the Board

The board is a separate audience, playing a different role from a different perspective and a different level of involvement. It is the president's task to determine the nature and frequency of communication with the board, but several observations will apply in any case. Board members are typically busy individuals with many demands on their time, and it is both proper courtesy and good board relations to help them to understand just what is being communicated as quickly and as easily as possible. Never send board members voluminous raw information that has been prepared for some other audience; spend the time to prepare a report that is designed specifically for board members, considering their level of familiarity with the details of the issues involved, the role they are to play, and the course of action recommended to them. *Figure 10* displays five levels of communication with the board, progressing from the simplest to the most comprehensive. The simplest, Level 1, assumes an event important enough to trigger a series of presidential telephone calls (e.g., "We settled this morning at 5 percent").

Level 2 should be the opening of all written reports: a narrative explanation of a page or two, typically backed up by a schematic summary that offers additional details. The goal at Level 2 should always be to permit a diligent

Figure 10

LEVELS OF COMMUNICATION WITH THE BOARD


*Level 1*
SUMMARY VERBAL REPORT
*Level 2*
1-2 pp. NARRATIVE, WITH 1-2 pp. SCHEMATIC WHICH OUTLINES BASIC ISSUES
*Level 3*
EXTENSIVE NARRATIVE, WITH DETAILED EXPLANATION OF ISSUES, ACCOMPANIED BY DETAILED OUTLINES AND SCHEMATICS, *ALWAYS PRECEDED BY LEVEL 2 INTRODUCTORY MATERIAL*
*Level 4*
COMPLETE TEXT OF AGREEMENT, OR RECOMMENDED SETTLEMENT, ACCOMPANIED BY EXTENSIVE NARRATIVE AND DETAILED OUTLINES AND SCHEMATICS, *ALWAYS PRECEDED BY LEVEL 2 INTRODUCTORY MATERIAL.*
*Level 5*
COMPREHENSIVE DOCUMENTATION: PROVISIONS TENTATIVELY AGREED TO, NOTES ON BARGAINING SESSIONS, PROPOSALS PUT ON THE TABLE BY BOTH PARTIES, DOCUMENTATION PROVIDED BY EACH PARTY TO SUPPORT ITS POSITION, MEMORANDA EXCHANGED, ETC., *ALWAYS PRECEDED BY LEVEL 2 INTRODUCTORY MATERIAL.*

reader to understand the essence of what is being communicated in 15 minutes of careful study. If the report is informational only, the cover memo *should so indicate; if the report relates to a pending meeting, a reminder* of the time, place, and date is in order. A memo of this nature should always conclude with the offer of additional information or documentation, and whom to contact for it.

If you have done your work carefully and effectively, and the board has developed confidence in your written reports, discussions will seldom move very far into the details below Level 2, but this can never be assumed or taken for granted. The chief negotiator needs to be prepared at any time to provide on short notice whatever information is desired by the board. (I have never been asked by a board for documentation at Level 5; should I receive such a request, I will comply, and then check to be certain my resume is updated.)

A note of caution to the chief negotiator: be careful about imposing on the schedules of the provost, the president, and the board. When deeply involved in bargaining, you will tend to see it as dominating campus life, but these individuals will invariably be busy with other matters that will also be significant and urgent. Bear that in mind.

## Communicating with Chairs and Deans

It will fall to the provost to determine the extent to which he or she communicates to the deans and the chairs on the progress in bargaining. The chief negotiator should be available for meetings with either or both groups to report on negotiations. On my campus it has not been customary to share the reports described earlier with deans and chairs, except for those serving on the negotiating team. Periodic meetings, with summaries of what is happening, should be held as needed.

## Communicating with the Negotiating Team

Communication between the chief negotiator and the negotiating team begins with a sharing of essentially all the information discussed up to this point. The team will be centrally involved in defining the positions embodied in the various reports to the president and the provost. The chief negotiator's team is his or her key support system, sharing as no one else does the experience of going to the bargaining table and coping with it. The relationship among members of the team will tend to be informal, extensive, and verbal. The members need to function on the basis of complete comfort and candor, totally uninhibited in privately sharing their viewpoints and perspectives on the issues at hand. (One of my most valued team members in faculty bargaining has been the senior dean, to whom I once reported as chair, who addressed me as "Hey, kid" until I was past 40, and not infrequently prefaced his comments with "You're crazy." To this day I listen to his comments with respect and careful attention.) The team members will be uniquely placed to pick up various pieces of information concerning bargaining from the campus rumor mill, which while seldom accurate is usually informative in one way or another. In addition, team members often hear casual comments from members of the opposing team that may shed a good deal of light on the situation. In general, a chief negotiator is well advised to utilize the team fully as one of the best resources available, and to show appreciation to the individuals who agree to serve in that capacity.

## Communicating with the Union and the Bargaining Unit

Communications between management's chief negotiator and the union's chief negotiator are a unique element in the bargaining, and there are three basic rules: always tell your counterpart the truth, always tell nothing but the truth, and never tell the whole truth. Be fastidiously accurate in your comments, not hesitating to respond that you simply don't know when that is the case. Pursue this approach not only at the table, but also in any private conversations you may have. Identify precisely the pieces of information that you will not share: minimally, where you are prepared to settle (at least not prematurely), the positions of individual members of the management team (ever), and what courses of action are contemplated if agreement is not reached. Sophisticated union representatives will understand and expect this approach, as it describes precisely the manner in which they will be communicating to you.

Typically, management does not communicate directly with members of the bargaining unit during negotiations, but rather deals with the union as exclusive representative. To bypass the union and go directly to the faculty would be a management end run of the sort described earlier, and be just as odious to the union as the union's execution of the tactic would be to you. However, there will occur extraordinary situations in which you conclude that whatever the risks, direct communication of some sort is necessary, and you should be prepared to move quickly if the need arises. The situation involved is one in which you are convinced that members of the bargaining unit have not been informed of important details, and are contemplating a course of action they would not take if they were fully informed.

We once concluded this to be the situation. Near the end of negotiations the faculty held a membership meeting, in which they voted not only to reject the university's last offer on salaries but to repudiate the union's position as well. We reduced the management viewpoint to a memorandum of four or five pages, which we mailed to faculty at their home addresses. The union expressed its contempt for both the tactic and the contents of the memorandum, but negotiations were settled four days later. A variant is a public statement, made to the press (or printed as an advertisement); such statements are read carefully by faculty. In still another variation, I once wrote a careful summary of the major outstanding issues in troublesome negotiations with a non-faculty unit, addressed to department heads. It was duplicated on distinctive yellow paper, and bore a large CONFIDENTIAL stamp on the first page. It was distributed through inter-office mail without being placed in envelopes. Numerous loyal secretaries telephoned my staff instantly to alert us to this error. A few days later the union's chief negotiator complained bitterly to the mediator that "thousands" of copies of this report were all over campus; we replied truthfully that we had distributed fewer than a hundred, all to members of the management team, and had no explanation for any other copies. Settlement was reached shortly thereafter.

Communication to members of the bargaining unit during negotiations is risky business, to be avoided wherever possible. Not only will it anger the union's leadership, it has potential for being counterproductive. You may fail to convince your audience, and you may even strengthen the union's position if it appears that you are simply trying to manipulate the faculty and staff. Nevertheless, there may be occasions when despite the risk you conclude you must go directly to the bargaining unit; be prepared to do so.

Finally, in terms of interaction, there will be other groups with whom you may need to communicate in detail (the news media are discussed in the following chapter). The basic advice is the same for all: give some thought to what is needed by way of furthering your overall strategy, get the statement reviewed and approved if necessary, and put it into play at the proper time.

## Keeping it Confidential

Maintaining confidentiality (the art of non-communication) is worth consideration in this context. Labor relations are generally thought of as highly confidential, and generally are, with people on the periphery of the process often interpreting this to mean that any document related to the bargaining process is absolutely confidential. This is in part the result of a smoke screen thrown up by both parties for identical reasons. Both management and union typically believe that after careful preliminary consultation with their constituencies, they do not want and cannot deal with extensive consultation and debate during the negotiations process. The confidentiality of the proceedings is often utilized to minimize or avoid this sort of interaction. ("I really can't get into a discussion with you on that issue at this time.") In fact, both parties share copies of the vast majority of the documents involved, or at least the information contained in them; that's what they are spending those interminable hours debating.

Denying people the right to participate in the debate may appear to fly in the face of the proposition that all people on both sides have participative rights (it does), but it is by no means disreputable or without valid historical precedent. Our founding fathers in Philadelphia negotiated the Constitution under tight confidentiality, and history has given their work high marks. Woodrow Wilson, by contrast, advocated open agreements openly arrived at—and got nowhere. The overriding imperative of cutting a deal, or getting to closure, simply takes precedence over the desirability of open discussion and debate.

The few areas of information that are categorically confidential require careful, specific attention. These include (1) the statement of parameters that define where you are prepared to settle; (2) any internal reports analyzing strategy; (3) the record of actions you are contemplating if settlement is not reached; and (4) any record that may exist of individual positions on issues that are at dispute within the management structure. To the greatest extent possible, insure the absolute confidentiality of this information, taking whatever steps are necessary to do so. In the unlikely event you settle at half a percentage less in salary than was authorized, written record of that fact should disappear. In summary, identify with care which documents are indeed confidential, and take appropriate steps to protect them.

## Maintaining Records

Finally, the management of communication extends not only to the sharing of information, but to the storage and retrieval of it. This requires the chief negotiator to devise systems to control the massive paper flow in negotiations. In my experience it has not been unusual for a round of faculty negotiations to generate 2,000 to 2,500 pages of documents over a period of several months. This demands careful control if you are to be able at any time to put your hands instantly on any given sheet of paper. The master control is the "log," a simple chronological compilation of every single document generated by the process, each document numbered, identified, dated, and stored. Several separate sub-compilations will be desirable and useful: articles signed (both a working copy and the originals stored separately), notes from bargaining sessions, and reports to the president.

The notes taken in the bargaining sessions are an important source of information, particularly as they permit the provost and the president an opportunity to track the flow of bargaining in some detail without going to the table. We decided years ago to avoid audio tape recorders, as a device that is sometimes chilling and routinely disruptive. More seriously, tape recorders produce information that is difficult and time-consuming to retrieve, unless you want the great expense of having the tapes transcribed. Far superior are notes, either a verbatim record or a summary, taken by someone present. This requires a staff member at the table whose sole duties are to take the notes. The task should not be rotated among team members, because often they will not have the needed skills, and you want them involved in the primary function of participating in the bargaining. Each set of notes should detail the date and times of the session, who was present, which documents were exchanged, and which were signed. Finally, these notes should be produced quickly, no more than a day or so after the session, to keep the provost and the president current; if they see problems, you need to know it immediately.

At the conclusion of bargaining, the log should be closed and retained for a significant period of time, minimally through the life of the agreement. In the event of grievance arbitrations involving ambiguous language, the intent of the parties at the time the disputed language was negotiated will be important, and you will want to consult the record of what happened relative to the language in question.

## Summary

To summarize the key elements in the management of communication in negotiations, I recommend that you adapt your organizational structure to the communication process in negotiations. Reinforce the awareness of how individuals are to function in the process, and try to avoid breakdowns in the structure. Watch for union efforts to move behind you by establishing direct contact with members of the board or the central administration, and be prepared to deal with these efforts by the union. Devise a communication system that will provide the necessary information to the various groups and individuals who will be involved on the management side. Understand the nature of confidentiality as it applies to negotiations, and protect those documents which are not to be shared with the union. Devise a system of storage and retrieval of the information contained in the voluminous documentation that will emerge from the negotiations, and manage that information carefully.

# 9
# Dealing with the News Media

The best advice for dealing with representatives of the news media during collective bargaining negotiations prior to impasse can be stated—not summarized—in one syllable: *don't*.

## Avoiding Media Coverage

Many Americans display a curious reluctance to refuse to talk to members of the press. It is as if the constitutionally protected right of the press to publish creates a corollary obligation on the part of the individual to disclose all, with "no comment"—much like pleading the Fifth Amendment—being a tacit plea of guilty, an admission that you have something to hide. Chief negotiators routinely have many things to hide, and should do so effectively, particularly as they relate to the news media. Do not be flattered by the people who want to quote you on page one or videotape you for the six o'clock news. Do not be tempted to vent your frustrations by revealing the reasonableness of your position to what appears to be a sympathetic ear. Don't even return reporters' telephone calls; have your staff do it.

## The Problems of Negotiating in the Media

Some of the problems of having negotiations in the news are obvious, some are not. Press relations are minimally a time-consuming diversion from the primary goal of securing an agreement with the union. It takes time to prepare press releases, time to analyze the statements issued by the union, time to restate your positions in a fashion that will work for public consumption without compromising your bargaining strategy or revealing your final position. Also troublesome is the oversimplification of complex issues that usually occurs in press coverage (particularly local television coverage), often accompanied by innocent misrepresentation; this can only impede the negotiations process.

More serious is the crystallization of positions. Initial positions are far different from final positions on most issues, and while one doesn't know immediately where the other party will settle, everyone on both sides of the table knows that generally the other party has some "room to move" on most issues. Once the positions held by the parties have been made public, however, each party will find components of its constituency urging it to settle for absolutely nothing less—however unattainable that goal.

Closely related are problems of negative reactions to isolated provisions tentatively agreed to. When you reach agreement with the union on all issues, the product is a package, a collection of parts that represent in varying degrees good news and bad news for all individuals involved. The less desirable provisions generally find acceptance in the larger context of the overall agreement. (One tolerates a mediocre salad if one is assured that the main course will be fine.) But if a great deal of publicity is given to negotiations at midpoint, when some issues have been tentatively resolved while others have not, expect strong and vocal opposition to certain matters tentatively agreed to, stronger and more vocal than would occur if they were part of a total tentative agreement. Publicity midway through negotiations is generally more of a problem for the union than for management, but it has its parallels on the management side. I have described earlier the careful work that needs to be done to consult the management team and to have them understand that at a certain point, discussion of the issues with them is concluded because of the necessity that the university go forward. If your faculty negotiations are being covered in great detail by the student newspaper, however, it will be difficult to explain to the deans that their role in the faculty promotions procedure cannot be reopened for further consideration.

Most of the union negotiators I have worked with have understood these problems, and have also understood that these are problems for both parties. We have traditionally agreed to a "news blackout" at the beginning of negotiations on my campus, an agreement that neither party will talk to the news media until we have reached agreement or impasse. There have been a few lapses, but on balance it has worked exceedingly well. It has worked so well in recent years that I get no queries from members of the press, because media representatives understand that we simply do not discuss negotiations that are in progress.

## Optimal Media Relations

When negotiations work most smoothly, media relations should consist simply of two press releases, preferably issued jointly by the parties. The first, at the beginning of negotiations, simply announces that you have begun bargaining, giving the media the basic details of timelines and the size and composition of the bargaining unit—and announcing your news blackout. The second, at settlement, should summarize the key points of the tentative agreement. When agreement has been reached, the union representatives may well be eager to go into much more detail than the management representatives, because press coverage can be a secondary mode of communication between the union and the bargaining unit, a part of "selling the package" for the ratification vote. As a management representative, you will have no similar need, and your interaction with members of the press can and should be minimal. Your comments should, however, speak positively about the contributions of this component of the work force, and the successful relationship between the university and the union. To note the obvious, you should never speak critically or boastfully in public of any agreement you have reached.

## Media Relations Prior to Negotiations

Sometimes media relations can be effectively cultivated well in advance of negotiations, permitting you to reduce or avoid some of the difficulties you will encounter if and when negotiations become public. It may be feasible for university representatives to meet on an ongoing basis with members of local editorial boards and news directors, educating them about the goals and activities of the university. Such a continuing dialogue may assist them in understanding how collective bargaining fits into the broader context of the university's operation. Similarly, if you know in advance which reporters will be covering your negotiations for the local media, it may be feasible to meet with them informally to discuss labor relations from your perspective, again educating them in the process.

There are potential hazards in this approach. News management may empathize with university management, but news coverage is written by reporters, who are themselves often unionized professionals who engage in collective bargaining. Do not be surprised to learn that reporters covering your university identify more closely with the faculty or staff in the bargaining unit than with the university's administration. Informal discussions with reporters may involve other pitfalls. Reporters routinely question aggressively, pushing to pry loose more information; invariably this can lead to a reporter asking you questions you do not want to answer, putting you in the uncomfortable position of "stonewalling," refusing to be fully candid in a dialogue you have initiated.

If your discussions with a reporter are "off the record," be sure that the two of you understand precisely what you mean, as the phrase has several meanings. "Off the record" sometimes means simply that your comments may be quoted, but not attributed; this occurs routinely in Washington, D.C. when statements are attributed to unnamed "White House officials." It may occasionally mean that you are willing to discuss a situation to assist the reporter in understanding it better, but you do not want to be quoted by name and your statements are not to be used directly. Occasionally, "off the record" means "This is what is really happening, and here is a document that you can utilize, and the name of a source who will probably confirm its authenticity—but don't reveal my involvement in this."

Candid discussions with reporters very seldom work as most university administrators would like, i.e., the reporter accepting at face value the administrator's explanation of a complex situation and writing news coverage to embody that version of reality. Competent journalists don't work that way. They are conditioned to believe that there are typically at least two sides to any story. They are continually exposed to persons and institutions that seek to manipulate them, and they are usually adept at recognizing such efforts instantly. They are familiar with the pattern of authority figures who are accustomed to imposing their decisions and viewpoints desiring to transfer that authority to the press, and they predictably and properly resist it.

Finally, if you are fortunate enough to reach agreement on a news blackout for the duration of the negotiations, you will be obligated to break off discussions with the press for that period, at least on the subject of current bargaining. Cutting off a running dialogue with members of the press at this point could damage whatever rapport you have established.

In my experience, saying as little as possible to the press before, during, and after negotiations is far preferable to any variation of attempting to secure positive news coverage.

## Media Relations During Negotiations

Notwithstanding the desirability of keeping negotiations out of the press, you should assume—and be prepared for—the possibility of extensive press coverage at any point in the negotiations process. Typically this happens when the negotiations have ground to a halt and the union concludes that it can further its interests by "going public," or when one or both parties have rejected a settlement recommended by a third party. Planning for media relations, on a contingency basis, needs to be built into the initial planning for bargaining.

It is highly desirable that the university designate one individual to be the sole spokesperson on the subject of negotiations, and that everyone else, from the board through the administration, refer all queries to that individual and refuse to comment on the matter to members of the press. This exclusive delegation should be clearly understood and fastidiously observed by everyone involved; the problem of multiple voices offering conflicting commentary needs no elaboration.

Who should serve as spokesperson? Certainly someone who is familiar in detail with the general process of collective bargaining and the specific issues at dispute in the current negotiations. This is not a task you can assign to a staff member in the public relations department following a one-hour briefing session. If you *do* utilize staff from public relations be certain you have someone who is capable of understanding the complexities of the process and mastering the voluminous details involved. Be sure you have someone who can be trusted to understand and support the management position, and to respect the tight confidentiality of the background details of the bargaining. Bring this individual into the negotiations early in the process, and be prepared to spend the time required to brief him or her on the details of the negotiations. As you have reduced to writing a delineation of the responsibilities of other key management participants in bargaining, define with precision and in writing what part the media spokesperson is to play.

## The Chief Negotiator as Media Spokesperson

The chief negotiator is the obvious choice as spokesperson for the university, since he or she will know more than anyone else about negotiations from the management viewpoint. In the routine situations of announcing the beginning of the negotiations or the reaching of agreement, the chief negotiator is logical or inevitable for this role.

You should, however, have an alternate spokesperson available on short notice. If you find yourself in a situation in which you are required simultaneously to talk to the press on a daily basis and to continue negotiations behind the scenes, you will need someone handling media relations who will have more room to maneuver than you will have. You will need someone who can honestly reply "I don't know" on various issues the chief negotiator will obviously know about, someone who can evade questions from the press best left unanswered. As an alternate chief spokesperson, the director of budget and institutional studies on my campus has done an excellent job of dealing with the press during faculty negotiations that were stalled on salaries, thus related directly to the institution's financial situation. The alternate spokesperson should always work closely with the chief negotiator to determine what information is to be released, and in what format.

If negotiations find their way into the news prior to settlement, do not immediately assume that you must respond; consider "no comment" first. Consult the union leadership if there is any question about the source of the news, for you may find the origin to be an unauthorized leak from someone on the other side (or your own side) and it may be possible to salvage the news blackout. Even if you confirm that the union is deliberately going public, consider the statements made before concluding whether you have anything to gain by responding.

Analyze the audiences of your constituencies carefully to determine what information you need to share with them, and what mechanism will best accomplish that goal. Direct communication with each group is almost always preferable to going through the news media. The board—always the first constituency—should be advised by telephone, or by memorandum, or both. A meeting with administrative staff is generally in order. (Note: if this is a large group, assume that whatever you say will be reported back to the union leadership.) If it is necessary to communicate to the student body or its leadership, work out carefully the approach that will be best.

A prepared written statement, preferably issued with no additional comments or elaboration, is often the best method of disseminating your viewpoint to the news media. This maximizes your control over how your position will be reported, and minimizes a variety of risks. Such statements seldom need to be lengthy, and should always be as brief as possible. While journalists prefer an opportunity to ask questions and seek clarification, they are familiar with the practice of a written statement issued without comment, and will generally give it due consideration. (Contrary to some critics of the media, most reporters seek accuracy and balance.) Press releases, like all primary documents in negotiations, should be either written or reviewed by the chief negotiator, and should have the approval of the president before they are distributed.

If the written statement will not suffice, and you must hold a press conference, plan it carefully. The spokesperson must be briefed in detail. Responses to questions should be short, simple, accurate, impersonal, and unemotional. Avoid getting into too much detail, and emphasize the important issues. Remember that even in press conferences one retains the right to decline to respond to specific questions. Record the press conference so that a transcript can be prepared if there is later a significant disagreement about what was said.

Individual interviews with reporters can also be helpful in getting your position across, if you are absolutely certain of the reporter's competence and knowledge in the area of labor relations. If, however, you find yourself dealing with a novice or an incompetent, the results can be counterproductive.

## Getting Back to the Bargaining Table

When negotiations "go public" on my campus, they tend to get a flurry of initial attention, as each party puts the best face on its position. Many people on campus, faculty in particular, watch these developments with a mild amusement, understanding that this is in part a ritual that is sometimes a necessary element of the bargaining process, that both parties are in some measure posturing. Once the press determines that the situation is essentially one of management and labor being unable to reach an immediate agreement, assuming no strike is imminent, the situation can quickly become a non-story from a journalistic viewpoint. Sometimes these exercises can have a cathartic effect for the parties, a release of frustrations built up over a lengthy period.

If the negotiations collapse during a burst of press coverage, stay in touch with the union leadership and look for opportunities to get the process back on track. Be sure the union's chief negotiator knows how to get in touch with you at all times. Consider asking him or her to join you for a quiet cup of coffee in a neutral location, to try to find out precisely what is blocking a resumption of negotiations. Attempt to have a candid conversation about the dynamics and limitations of press coverage during the negotiations process; however enlightening and even entertaining all the attention from the media may be, it will not produce a negotiated settlement. That can occur only as a result of discussions between the parties.

## Summary

To summarize the basic rules for dealing with the news media during negotiations, I recommend that to the extent possible you always avoid or at least minimize news coverage. Seek agreement with the union on a news blackout, and if you get such an agreement be careful to honor it. Assign exclusive responsibility for speaking to the press to one individual, and make every effort to see that everyone else in the administration and on the board avoids public comment. If you conclude that a public statement is necessary, try to restrict it to a written statement with no elaboration. If you must hold a press conference, brief your spokesperson with great care on the information to be released, and on the strategy it relates to.

Finally, most simply, get the negotiations out of the press and back to the bargaining table for resolution.

# 10

# Negotiations I: Managing Language

It is desirable that the chief negotiator—or, minimally, the individual who writes management proposals—be skilled in handling the written language. Verbal communication skills are also important, in different ways, at the bargaining table. Some applications of effective communication through language are unique to the negotiations process, or at least different in their relative rhetorical importance.

## The Virtues of Clarity and Coherence

Clarity is the greatest stylistic virtue to pursue in language to be incorporated into a collective bargaining agreement. Above all, be clear. Your goal is to achieve a clarity of intention and expression that cannot possibly be misunderstood by anyone who peruses the published agreement. Clarity is most easily achieved through precisely quantified provisions. Preferably they appear in simple sentences. You will encounter no disputes in implementing a 5 percent salary increase in a given year, assuming only that you have an indisputable record of what salaries were the preceding year.

Coherence is a second virtue to seek. This means simply that all the sections in the agreement should live in peace with each other, with none surfacing to contradict another. Bear in mind the details of what you have agreed to at any given point in the negotiations, and try to be certain that you do not agree to separate provisions that are incompatible.

## The Use of Redundancy

Redundancy—a pejorative term used by English instructors to denote repetitiousness—can also be useful in the language of negotiated agreements. It appears in some stock phrases. A union is described as the "sole and exclusive" representative (if it is one, it is the other), agreements are described as "sole and only," and arbitrator's awards are often "final and binding." These create no problems, as they merely emphasize by repetition precisely what you want to say. You are permitted, even entitled, to say it any way the parties agree to say it. Some provisions may be stated twice, first in the positive, then in the negative. The definition of the scope of the unit may be stated to include various positions, and then restated to exclude others, with the first serving as a restrictive inclusion, the second a comprehensive exclusion. Brevity is a virtue that yields to clarity and coherence in contract language.

## The Problems of Modifiers

Modifiers—adjectives and adverbs that qualify the meaning of nouns, verbs, and other modifiers—are a major problem in the language of bargaining when they qualify without precision the obligation of management to perform certain tasks or meet obligations to the union. Modifiers, unqualified as to who will authoritatively interpret them, can constitute a full-employment provision for grievance arbitrators called in to resolve disputes. I once received a faculty proposal that would have required the university to provide "adequate" secretarial support, offices, laboratories, and other resources necessary for faculty to perform their duties. This is on its face a desirable goal, but what is "adequate?" Who is to define it, to apply it to a specific context? An arbitrator.

Even if modifiers carry considerable risk and present major problems, there may be occasions when you conclude that they are your best, or only, solution. An example in bargaining with non-faculty units is the matter of releasing union stewards from their regular duties to investigate a potential grievance. Negotiations invariably involve a grievance procedure, which requires union representation and involvement. This in turn requires permitting union representatives a reasonable opportunity to investigate complaints, without clogging the formal grievance procedure every time someone voices dissatisfaction. At the same time, management does not want the loss of staff time or the abuse of having employees walk off the job at will in order to "investigate grievances." Solving this problem in negotiated language may defy quantification. A common compromise is the provision that union representatives may leave their assigned duties to investigate grievances after securing the permission of their supervisors, coupled with the provision that this privilege will not be abused by the union or "unreasonably denied" by management. Agreeing to this language can be an acceptable resolution, providing you understand that you are willing to arbitrate disputes that may arise concerning "unreasonable" denials.

The cloudy language of modifiers may also be appropriate when you are enunciating a general principle and wish to avoid being held to any specific course of action as a result. Faculty agreements on my campus for years have contained an article on students which states that we are committed to serving them in general and consulting with them informally on matters of interest to them. The article is so replete with modifiers that it creates no discernible obligation on either of the parties that is troublesome. It appears nevertheless to have served its purpose.

## Using Language in Negotiations

During negotiations, use the negotiating team as an editorial review board to scrutinize each draft proposal word by word for clarity. Here as in other functions of the negotiating team, complete candor is needed, with no assumed respect for authorship.

As a corollary, do not write contract language of more than a single sentence—and then only with great care—in the actual negotiating sessions. Use these to get to agreement on issues and principles, but develop or review the language to embody them in caucus.

Avoid the use of sub-committees, either joint or management, to develop contract language on specific issues. Language produced by committees has problems that are well known, and language intended for a collective bargaining agreement should be filtered through a single sensibility and one typewriter.

Work on your writing skills. Try to fall in love with a dictionary (preferably two or three) and perhaps a handbook or two, and cast off all inhibitions. Remember that a central characteristic of writing is the innate ability of anyone to produce an unlimited number of sentences that have never before been created. If a sentence aborts, throw it away and make another. If your need to write clear language that will work in the context of collective bargaining conflicts with traditional rules of usage, forget the latter and seek clarity and coherence; your eighth-grade English teacher will never see the agreement, much less read it or grade it.

## Audience Analysis

An important consideration in language, here as elsewhere, is audience analysis. You need always to remember exactly for whom you are writing. The primary audience is, collectively, the union leadership and the administration you represent. It is critically important that they understand what is being agreed to and that the language embody that agreement as clearly as possible. Your secondary audience is the arbitrator who may be called in to provide a determinative interpretation of any passage in the agreement that is disputed as to meaning; it is your goal—never fully realized—to avoid any possible misinterpretation or misunderstanding. The tertiary audience includes members of the bargaining unit and chairs and other administrators who will be involved in the day-to-day administration of the agreement.

## Speaking at the Table

If the written language needs to be handled carefully during the negotiations, the spoken word is often equally important, and occasionally more so.

Negotiators talk a great deal during bargaining, and the manner in which they speak is as important as the information explicitly communicated. A tone is quickly established and revealed, a basic attitude toward the other party that colors and shapes the comments being made. The tone of management's chief negotiator should be one of respect for an adversary who comes to the bargaining table representing a valued segment of the university that is essential to its operation. The tone is most easily achieved if in fact it reflects your attitude away from the table as well as during negotiating sessions, but whatever your personal views may be, your performance at the table must include a careful avoidance of any remarks that reflect, or could be construed to reflect, contempt, ridicule, or animosity.

Most of the discussion at the table will be devoted to examinations and explanations of the proposals on the table, and to the details of the bargaining process. Statements of intent are important, and not only because they assist in understanding the other party's position. If you find yourself in arbitration following ratification of the agreement, and the grievance rests on ambiguous contract language, the arbitrator will be interested in any evidence of the intention of the parties at the time the provision was negotiated. Thus you should shape your statements of explanation and intention carefully and clearly, and maintain a detailed record of what you have said. Similarly, you should record and analyze carefully the statements of intent offered by your counterpart.

## Suggestions for Saying "No"

A relatively small amount of time will be spent by each party advising the other of its position on specific proposals—whether one party agrees or disagrees, and if so how strong the opposition is. The latter are the comments to be uttered and analyzed most carefully, both in terms of disciplining yourself to convey your position accurately and interpreting the position of the union. When you refuse to agree to a proposal, you have many choices of language to express yourself, each sending a different signal to your counterpart. "The university would like to set this matter aside at this time" is perfectly neutral, revealing nothing about your final position. "The university is not prepared to agree to this proposal at this time" implies that at the right time you will agree. "We cannot agree to your proposal as presented, but we are prepared to offer some movement in this area if you will show some movement in these two others" signals clearly that the union can achieve part or all of its goal on this issue—at a price.

Similarly, your statements expressing a refusal to agree, now or at any future point, can be expressed in numerous ways. Choose carefully the phraseology that will communicate your position clearly, and if necessary reiterate your position by rephrasing it. "This is absolutely and categorically unacceptable" says it clearly. The union can be expected initially to reject your rejections, pushing to find your real position, to identify points on which you will eventually move. Various elements may be introduced in your reiterations: situational contexts ("We will not agree today, we will not agree at impasse, we will not agree when you have gone on strike"); feasibility ("We are not persuaded that this proposal would be appropriate, but even if we were it could not be ratified"); or scope ("We do not believe we are under any obligation to negotiate in this area, and we do not intend to do so").

Your language should fit the nature of the proposal. If the union is seeking access to a bulletin board, you have obvious credibility problems if you declare it to be a strike issue. In this regard, two phrases should be used with particular care. A "condition of settlement" is an element or a provision without which there can be no agreement; a "last and final" offer is the last position you will take prior to arbitration or a strike. Use these phrases carefully, sparingly, and accurately.

An example of comments that can create major problems at the bargaining table involve the university's ability to pay. Public sector employers are often precipitous in declaring that funds are not available to meet the union's demands; the union, generally having examined the budget, often responds by pointing out ways they can indeed be afforded. Do not walk into the trap of declaring "We cannot afford this" if what you really mean is "We are not prepared to take the steps that would be required to fund this proposal." The "ability to pay" argument creates other problems for employers in the private sector, including the possible requirement to open your fiscal records to the union. Finally, if you permit negotiations to move to debate over ability to pay, you have permitted the union to enlarge the scope of bargaining. You are required only to negotiate pay for members of the bargaining unit, not larger issues of allocation of resources.

All your comments on where you stand on the issues will be scrutinized with care, and they should represent a coherent and consistent set of positions and signals. Simultaneously, you will be doing the same careful evaluation of your counterpart's comments.

## Summary

To summarize, I would advise you to prepare your proposals with care, seeking language that will clearly and coherently reflect the provisions you hope to achieve. Use any stylistic approach that will achieve these goals. Avoid modifiers wherever possible, and seek quantification to the extent feasible. Bear in mind the audiences for whom you are writing. Watch your language at the bargaining table, setting and maintaining a proper tone. Pay particular attention to comments that communicate your willingness (or refusal) to move on certain issues, taking pains to communicate your position with precision.

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# Suggestions for Seven Standard Articles

There is no definitive list of articles that must be included in a labor agreement. Like all contracts, an agreement must identify the parties executing it, the duration it is to be in effect, and the consideration one party is to give the other for the performance of specified actions. The subject matter of bargaining is usually defined as wages, hours, and terms and conditions of employment. Within these broad guidelines, you will find a variety of specific articles in labor agreements. A number of articles are standard. "Term of agreement" was discussed in detail in Chapter 7. "Separability," "union rights," "retained rights," and the "zipper clause"—all important but relatively simple articles—are defined in the glossary in Appendix B. Seven other standard articles are discussed below, with suggestions about what you should seek to achieve and what you should avoid.

The sections which follow are brief, and do not presume to treat these complex issues exhaustively. They do offer, however, an introduction to the essential concepts involved, from the conflicting perspectives of what you can expect the union to attempt to secure, and what you as management's chief negotiator should try to obtain or preserve.

Finally, an earlier word of caution is worth reiterating and emphasizing. Basic employment issues are governed by constitutional mandates and prohibitions, which are subject to ongoing interpretation in the federal courts. Federal and state laws govern other elements of employment. This chapter is no substitute for legal counsel when you are working out the detailed applications of these concerns to your specific situation.

## 1. Salaries

Salary administration is a difficult task, in collective bargaining or independent of it. If individual salaries are public information, the problems of invidious comparisons will be ongoing. Disagreements about the fiscal value of an individual's worth to the institution will always exist. In large part, this is due to the abstract and arbitrary nature of money.

Nevertheless, salaries are usually the pivotal issue in negotiations, and represent management's largest bargaining chip. The effect of money at the bargaining table can be enough to tempt the most conservative ideologue to believe in economic determinism. As a chief negotiator, exploit fully the ability to grant salary increases, spending the money carefully to achieve your broader goals in bargaining.

The extent to which faculty salaries are negotiated varies. In some public jurisdictions, the legislature effectively determines the level of salary increases, or must approve agreements before they are valid; this may permit the negotiations process to determine little more than the mode of distribution. In the private sector, and in some public jurisdictions, salaries are totally negotiable, with the university responsible for funding whatever it agrees to. In some jurisdictions, interest arbitration may determine the outcome. Your first task as a chief negotiator considering salary issues is to understand fully the latitude your university has in negotiating salaries.

The configuration of salary increases is important. Uniform dollar increases produce greater percentage increases for faculty or staff with lower pay, while uniform percentages produce more dollars for individuals with higher salaries.

### *Merit Pay*

Unions typically propose uniform increases for members of the bargaining unit; management often seeks merit pay. Management argues that superior performance justifies greater rewards; the union may respond that evaluation procedures are not adequate to support such distinctions, that all continuing faculty are worthy of equal consideration. The union may also fear that merit pay will create divisiveness among members of the bargaining unit, which is always undesirable, or that management will use merit pay to reward faculty sympathetic to the administration.

Merit pay provisions usually involve setting aside a portion of the total increase, with merit determinations to be made by management; the "merit pool" may be as little as 1–2 percent of a 5 percent total increase. Meager funding for merit pay can create problems. If you have a 1 percent merit pool, you will have to deny merit pay to four faculty in order to grant a 5 percent merit increase to the fifth. Evaluate merit pay proposals carefully in light of how you will administer the provision if you secure it.

A variant approach is to negotiate uniform increases combined with the provision that management reserves the right to grant additional increases. This can accomplish your goal, but it will diminish the perceived value of the uniform increase, and it will create expectations you may be unable to fulfill.

### *Steps and Ranges*

Steps and ranges are constructs that often govern faculty salaries. Step systems, standard in the public schools, start with a base and provide annual increments ("steps" up) that are percentage increases of the base, typically 3–5 percent. The base in public schools is the salary of the teacher with a bachelor's degree and no experience; additional columns of steps are provided for teachers with a master's or doctoral degree. All steps, however, are typically defined as a percentage of the bachelor's base. Step systems are limited, reflecting the theory that at some point additional experience ceases to increase the value of the employee's services. This may occur after 10 or 15 years. Adaptations of the step system for university faculty may reflect rank and years of service, and perhaps highest earned degree.

Step systems are the most rigid salary structures that exist. Negotiations focus on proposals to raise the base, which produces an across the board increase for everyone, plus step increases for those who have not reached the final step. (Civil service step systems are structured similarly.) Management representatives are often frustrated by the union's refusal to acknowledge that step increases are part of the economic package; union representatives will view step increases as entitlements born of previous negotiations.

Step systems produce salary ranges—salary minima and maxima—for each category of employee subject to a finite series of steps. However, salary ranges may exist independent of steps. Unions are eager to establish the thresholds of salary minima by rank, and management often seeks to restrain salaries by imposing maxima. Individual salaries may progress through the range by negotiated increases unrelated to steps.

### *Special Increases*

Special increases are typically granted at the time of promotion in rank and the completion of a doctorate. These increments may be percentages of base salary, or uniform dollar amounts. The increments may be uniform for all faculty, or may be at management's discretion, subject to a negotiated minimum. If your compensation program is a structured step system, rank and degree level are presumably integrated into the system.

Special increases may also be sought for faculty in disciplines where a tight job market makes recruitment and retention difficult without higher salaries. This may be a sensitive issue to the union leadership, which often comes from disciplines in arts and sciences where employment opportunities have been depressed since the early 1970s. Nevertheless, you will need to secure or retain whatever latitude is required to hire and retain the faculty your university needs. Problems of this nature may be resolved through separate schedules for different disciplines, the reserved right to adjust individual salaries, or complete control over establishing initial rank and salary.

### *Remembering Total Compensation*

Salaries will be the focal point of negotiations, but management representatives should never forget that salaries are only part of the cost of compensation. Other elements of compensation, primarily group insurance benefits and contributions to the retirement program, will equal 20–30 percent of salary. Some compensation costs will increase directly when salaries are increased. Communicate—and emphasize—the total cost implications of salary proposals offered by both parties.

### *Summary*

Understand thoroughly the authority your university has in negotiating salaries. Become familiar with the details of total compensation, and never miss an opportunity to remind union representatives of total cost impact of a proposal on the table. Determine the pattern of compensation that will best serve the university, and shape your proposals and strategy accordingly. Examine your options in situations that suggest special salary increases, and determine the extent to which you need to retain the authority to increase individual salaries unilaterally. Most importantly, never permit salaries to become an isolated issue; money will be your strongest source of leverage, and should be used to secure agreement on all outstanding issues.

## 2. Workload

The workload article is one of the most important articles in any agreement. Typically, retained rights include the right to schedule, assign, direct, and supervise employees. The workload article qualifies that reserved right by defining how much employees are to work, and what rights they are to enjoy relative to work assignments.

### *Hourly Support Units*

Workload is relatively simple for hourly staff. The federal Fair Labor Standards Act (FLSA) provides the basic structure; it defines the standard work week as 40 hours by requiring the employer to pay overtime for hours over 40. The workload article for hourly staff typically defines details of scheduling staff and advising them of changes in schedules. It may cover such details as rotating opportunities for overtime, minimum pay for employees called in during emergencies, premium pay for employees working on holidays, lunch hours, breaks, and "wash up" time.

In departments or units where numerous employees perform identical duties at different times, the agreement may provide for "shift bidding," i.e., employee choice of schedule based on seniority. Conversely, there may be a provision to reward employees who work undesirable shifts with additional pay.

Union proposals on workload often contain provisions that would minimize or abolish management flexibility in assigning staff. The union may seek maximum overtime opportunities by restricting your opportunity to avoid overtime through rescheduling. Simultaneously, the union may seek the right of employees to reject any overtime assignments they do not want. The union may seek to restrict work schedules to eight continuous hours daily, Monday through Friday. The union may seek "work jurisdiction" by barring the use of anyone outside the bargaining unit (supervisors, student employees, members of other units) to perform duties regularly done by members of the unit.

Avoid these provisions. Seek language that provides employees with reasonable treatment in the scheduling of their work, but retain the authority to make scheduling decisions as appropriate.

### *Faculty Workload*

Negotiating a comprehensive faculty workload policy can be extremely difficult. Hourly staff work is time-based and supervised, and thus easily quantified. Faculty spend most of their time on task-based work that is seldom supervised, engaging in a wide range of pedagogical and professional activities in the classroom, the laboratory, the library, and at home. Measurement of these activities with precision can be as impossible as it is desirable.

Compounding the problems of measurement are differences between disciplines which make comparability difficult. On my campus we have the usual lecture courses, with laboratory components in the sciences and engineering. We also have music faculty providing individual lessons in applied music; physical education faculty teaching activities courses in bowling, tennis, and many other sports; and education faculty overseeing field-based experiences for students. The list could be continued indefinitely.

In addition to teaching, faculty engage in research and service; these activities are also difficult to measure absolutely, and even more difficult to measure comparatively.

Notwithstanding these difficulties, the faculty union may propose a rigidly standardized workload policy that would reduce workloads and establish overload pay for additional assignments, or increase the existing structure of overload compensation.

Your first task as management's chief negotiator will be to secure exhaustive data on faculty workloads. Teaching assignments must be measured both in contact hours and student credit hours. You will need to understand this data thoroughly, including any underlying considerations. (English faculty teach small sections of freshman composition, but suffer the tyranny of grading all those themes; physics faculty may teach small sections of an upper division course, balanced by large sections of lower division service courses; Professor X may teach huge classes, but with the help of several graduate students who conduct small group discussions and assist in grading assignments.)

If you are negotiating an initial faculty contract, consider proposing to maintain your present workload policy and establish a joint faculty/administration task force to study workload in detail following ratification.

If you do negotiate a comprehensive workload policy, bear in mind the following. Negotiated provisions on workload will prevail over alternate solutions to workload problems, unless the latitude to find alternate resolutions is protected; collegial resolutions between faculty and chairs can disappear. To the extent that you agree to faculty control over the courses they are to teach, you are granting them a variation of work jurisdiction, and surrendering management's right to assign employees. Remember also that subsequent disputes over workload provisions will be subject to determination through the arbitration provision of the grievance procedure, not by academic administration. Do not forget the comprehensive and exclusive nature of collective bargaining agreements; management's rights to assign duties to faculty will be restricted to what you have protected in the retained rights article or specified elsewhere in the agreement. If you have not covered faculty office hours, student advisement, availability of faculty between terms, and other faculty responsibilities, you may discover that you have lost the authority to require faculty to perform these duties.

Finally, workload has major fiscal implications that must be understood. If your faculty teach an average of 24 credit hours a year, each reduction of one hour means you lose 4.2 percent of your aggregate teaching faculty's services. One hour is the equivalent of telling your secretary, who normally works Monday through Friday until 5:00 p.m., that henceforth he or she may leave at 3:20 p.m. every Friday. A reduction of two hours is almost the equivalent of telling your staff they have Friday afternoons off from now on. Faculty services lost through workload reduction will require you to hire more faculty or offer fewer courses.

Understand the implications.

## 3. Grievance Procedure

The grievance procedure serves to process complaints from members of the bargaining unit, or the union, or management, that the other party is failing to comply with the terms of the agreement. Management should seek a narrow and precise definition of a grievance as an allegation of an explicit violation of the terms of the agreement. You may find the grievance procedure being used by employees who wish to complain about a wide range of issues, and the system can serve to bring problems to your attention. However, when the campus-level review of a complaint is exhausted, you do not want contract language permitting grievance arbitration of a dispute outside the scope of the agreement.

Typically a grievance procedure contains three on-campus steps, followed by arbitration. With faculty, the usual steps are chair, dean, and provost. You should establish a time limit within which grievances may be filed, to protect yourself against ancient complaints. The time limit may range from a few days to as much as 60 days, but establish a limit. Generally, time tolls from the occurrence of an event or the time the grievant becomes aware of it, if this occurs after the fact. Clarify the latter to mean the date the grievant had reasonable opportunity to be aware of the fact giving rise to the complaint. For example, if the dispute is based upon information contained in an annual contract of reappointment, the grievant should have been aware of the problem before signing the contract, and should have raised the questions then.

It is important to provide that a grievance be initiated at the level with authority to provide relief; if a grievance is triggered by a dean's action, it is a waste of time for the chair to hold a hearing. Another way to save time by avoiding unnecessary hearings is to provide that the hearing officer at Step 2 and perhaps Step 3 may issue a disposition without holding a hearing, if this is deemed appropriate. This provision should not be used to avoid hearing grievances, but it can be helpful in those situations when a meeting is clearly unnecessary. In addition, you should identify the hearing officer at each step in a manner that permits the use of substitutes, i.e., "the provost or his or her designee;" grievances must be processed on those occasions when one or more of the hearing officers will not be available.

Time constraints govern the processing of grievances as well as their filing. Typically, timelines govern the following sequence: an event occurs, and a grievance is filed; a hearing is held; a disposition is issued; the grievant accepts or rejects the disposition; a hearing is held at the next step, or a disposition is issued, if the initial disposition is rejected; if the second disposition is rejected, the process is repeated at Step 3; if the Step 3 disposition is rejected, the parties select an arbitrator, and a final hearing is scheduled and held; the arbitrator issues an award. (Each grievance, disposition, and reaction requires precise documentation; thus, standardized forms are in order.) Deadlines in the grievance procedure must be observed carefully. Employee discontent is compounded when missed deadlines suggest management indifference. In addition, failure to adjust grievances in a timely manner is a standard unfair labor practice.

You should seek a provision that failure by the grievant to reject a disposition in a timely fashion constitutes acceptance of the last disposition. Conversely, you should avoid a provision that failure to issue a timely disposition will require granting the relief sought by the grievant. If this appears inconsistent, remember that the burden of going forward always rests with the charging party, and failure to go forward implies acceptance. At the same time, it is illogical to grant substantive relief on the basis of procedural error.

Management representatives may be apprehensive about grievance arbitration, fearing the results of granting final authority to a third party who will be unaccountable to anyone for the results of his or her decision. Apprehension is understandable, but you must also understand the union's rationale. In negotiations you will seek, and should not settle without, a strong no-strike clause. You will seek this to be certain that for the term of the agreement you will not have to face the disruption created by a strike. The union's logical response to management is, if we agree to forego the right to strike, we must have grievance arbitration as an alternate means of assuring management's compliance with the terms of the agreement. Without arbitration, the union's only recourse may be litigation, a cumbersome, time-consuming, and expensive process. Thus arbitration will be of critical importance to the union.

The arbitrator's authority is typically restricted in several ways. The scope of arbitrability, as noted, should be tightly restricted to the explicit provisions of the agreement. You may restrict scope further by barring arbitration of specific actions or provisions (e.g., removal of probationary faculty or staff, or the evaluation of applicants for promotion). It is common to state that the arbitrator may not add to, subtract from, or modify the terms of the agreement, or substitute his or her judgment for the judgment of management. It is also common to note that grievances arising from procedural errors are to be corrected procedurally rather than substantively.

The language in your article on the grievance procedure should be drawn with particular care. This article will define the systematic handling of complaints, and will establish the quasi-judicial structure for securing a definitive interpretation of any disputed provision of the agreement.

## 4. Union Financial Security

Union financial security is a concept, and often the title of an article, that may encompass dues check-off and either agency fee or union shop. These are provisions routinely sought by the union.

Dues check-off is an agreement by the employer to provide payroll deduction of membership dues, upon written authorization by a member of the union. This provision is valuable to the union, as it simplifies the union's bookkeeping and administration. Rather than having to secure dues from each member, the union receives a single check from the employer each payday. In addition, union leaders assume, probably accurately, that dues structures will probably be much more acceptable if dues are paid from dollars the members have never received as net pay. In this regard, dues check-off is similar to other taxes routinely withheld from paychecks.

Agency fee gives the union additional financial security. This provision requires that any member of the bargaining unit who chooses not to belong to the union must pay an agency fee to the union, in consideration of the union acting as the employee's agent in collective bargaining. The amount of the agency fee is as nearly identical to full dues as the union can justify. Agency fee provisions have been the subject of extensive litigation for a number of years, with challenges being made as to the appropriate amount and the uses to which the funds can be put. If the union secures an agency fee provision, it will be assured of cash flow on a regular basis from the pay of all members of the bargaining unit. "Agency shop" describes an employment situation in which the employee is subject to an agency fee provision.

An alternate to the agency fee is the union shop, a provision that requires all members of the bargaining unit, as a condition of employment, to be members of the union. This provision is seen by the union as preferable to the agency fee for several reasons. Required membership may avoid the possibility of a vocal minority of bargaining unit members who on principle refuse to join the union, regardless of an agency fee provision. Full union dues may be significantly higher than the agency fee; in addition to regular membership dues, members may be subject to additional assessments on special occasions. Finally, unions often have the authority to impose sanctions upon its members that permit greater discipline and control than can be imposed upon agency fee payers. For example, union members may be subject to fines levied by the union for engaging in proscribed activities (e.g., crossing a picket line during a strike).

Management's position on these issues is often determined by its position on unionization in general. If management seeks to minimize the power of the union, or believes that it reflects barely a majority support among members of the bargaining unit, management may oppose any form of union financial security. In addition, management representatives may have ethical objections to requiring employees to provide financial support to the union. On this point, union representatives will respond that such concern is a form of paternalism; the employees have already voted to be represented by the union, and have declined conversely the opportunity to decertify the union. Further, the union will argue, collective bargaining results in benefits for all members of the bargaining unit, and it is only equitable that the cost of bargaining be shared fairly and uniformly. By way of caution, I suggest a very hard examination of any assertion by management colleagues that members of the bargaining unit really do not want to support the union. These perceptions often reflect the casual comments of a few employees who are eager to tell management what they assume management wants to hear. The best information you ever have about employee sentiment will be the vote counts in elections and ratification votes conducted by secret ballot. Rely on that information. Anecdotal data is notoriously unreliable.

On a more pragmatic level, union financial security proposals often find acceptance in heated negotiations because they are essentially no-cost issues to the employer, and they can be heavy bargaining chips at the table. If your negotiations lead you to agree to union financial security for the first time, exploit fully the trade-off value of this provision.

Several administrative details need to be clearly specified in contract language on union financial security: timely and written notification by the union of what the dues structure is to be for the following year, a time limitation on the right to sign up for payroll deduction of dues or to discontinue it, the authorization card to be used, the schedule of withholding, and the requirement to forward deducted funds. Clear all these details with your payroll staff before agreeing to language. In addition, in light of the history of litigation on agency fee, secure an indemnification clause that will hold the university harmless in the event of a legal challenge to an agency fee provision.

## 5. No Strike

The no strike clause may be short and simple, but it is of critical importance. Define "strike" broadly to include variations such as slowdowns, sitdowns, "sick-outs," etc. Secure explicit language providing that the no strike clause will prevail in the event employees in another bargaining unit are on strike and have established picket lines. State the assumption that any employee who fails to report to work during a strike will be engaging in the strike. Finally, establish strong sanctions, including removal, that can be imposed upon participants in a proscribed strike.

Unlike technical provisions that will seldom have a direct impact upon members of the bargaining unit, the no strike clause should be clear and easily understandable, to permit all bargaining unit members to be fully aware of its provisions and implications.

## 6. Employment Security

Employment security is an umbrella term for provisions that define employment rights enjoyed by members of the bargaining unit, and the rights retained by management to terminate the employment relationship. Three elements are addressed in most agreements: removal of probationary staff, removal of non-probationary staff for cause, and layoffs or retrenchment.

### *Removal of Probationary Staff*

Probationary employees serve a specified period during which their performance is evaluated by management to determine whether continued employment is desired. Management typically retains almost total authority to terminate the employment of probationary faculty and staff. Unions often seek to restrict this authority, by proposing required statements of reasons for removal, detailed appeals procedures, and arbitration to resolve disputes concerning procedural compliance or the wisdom of the decision. Management opposes these thrusts, seeking to protect the right to correct errors made in the recruitment process.

The ideal provision on removal of probationary employees, from the management perspective, is a minimal statement defining notification rights, with no requirement to state reasons or to discuss them, and no third party review of the decision. Management's aversion to stating reasons does not mean that reasons will not exist. It reflects instead the awareness that stated reasons will tend to redefine the issue by raising other questions of fact, relevance, and judgment. You will be well advised to retain maximum management authority in this area.

*Termination for Cause*

Non-probationary faculty and staff, called "tenured" or "permanent," enjoy greater job security than probationary employees. Having successfully completed their probationary periods, they are generally entitled to continued employment unless they are to be removed "for cause" or the employer reduces the work force. Employers can be held accountable for honoring the commitments they have made to employees, commitments which may appear in labor agreements, employment contracts, written policies, or employee handbooks. The grievance procedure of the agreement is the enforcement mechanism for employment provisions specified therein; you may be accountable in litigation for employment commitments made elsewhere. Non-probationary public sector employees enjoy property rights under the Fourteenth Amendment; rights which may not be deprived without due process. Although there is no universally accepted definition of due process, it is understood to include a number of provisions: a statement of reasons provided to the non-probationary employee who is to be terminated for cause; a meeting with the employee, who is entitled to representation; an explanation of the reasons; and an opportunity for the employee to provide information and ask questions.

Contract language on termination for cause begins with a definition of the reasons that will justify termination. The definition may be as brief as "just cause," without elaboration, or it may include a list of specific reasons. A third pattern introduces a partial list with the qualification that "cause includes but is not limited to" the stated reasons. Seek language broad enough to cover an appropriate range of situations.

The procedure to be followed should be simple. The employee is provided with a letter which states the reason his or her employment is to be terminated, and establishes the time, date, and location of a meeting to discuss the reasons. The meeting is typically held by the appointing authority or his or her designee. The employee, or his or her representative, may provide information that convinces the management representative that an error has occurred in determining facts, or that removal is not justified. If neither occurs, the employee receives a second letter confirming removal and establishing the effective date of termination.

Typically, the employee may appeal the decision, to the president, to the board, or to a state personnel board, if one exists with jurisdiction to review such decisions. If your labor agreement permits it, the employee may appeal the decision to arbitration through the grievance procedure. (Seek language that restricts the employee's appeal to a single source.)

It is common to provide arbitration as binding third party review of decisions to terminate for cause, although constitutional rights to due process do not create that entitlement. Often the arbitrator has authority to review both procedural compliance with the terms of the agreement and the judgment that the fact basis justified removal. This distinction is crucial, and contract language should communicate precisely which components of the decision are to be arbitrable.

Other details to be covered in this section of the agreement include the employee's status during the period the appeal is being heard; he or she may be suspended with or without pay, or continued in his or her position. You may also want to address details of payment for accrued vacation, the employee's opportunity to maintain group insurance coverage for a specified period, and other matters related to separation.

Do not be surprised if union representatives work zealously to make it effectively impossible for you to prevail in termination for cause proceedings; their efforts may include proposals that narrowly restrict the definition of cause, establish complex and perhaps multiple appeal procedures that will be difficult to manage, define lengthy periods of advance notice, and mandate arbitration of all the details involved. Your goal, in contrast, will be to seek a reasonable definition of cause, combined with a simple appeal procedure that will permit a speedy resolution of disputed decisions.

### *Reductions in Work Force*

Reduction in work force, retrenchment, and layoffs all describe the employer's reduction of the number of employees performing some of the work required in the operation of the organization. Generally, the decision to reduce the size of the work force is a right reserved to management, and does not have to be negotiated with the union; however, the impact of the decision is a mandatory subject of bargaining. This line is often blurred, and unions with sufficient clout may effectively negotiate the conditions that must be met, and demonstrated, before layoffs can occur. Expect your union representatives to seek negotiated language to define reasons justifying layoffs, hoping thereby to be able to challenge and reverse layoff decisions that do not meet negotiated restrictions.

Your goal is to avoid a negotiated definition that must be met prior to layoffs, restricting contract language instead to the procedures to be followed. These should include notification rights; identification of those employees to be laid off, based to some degree on seniority; and recall rights, which define the period of time following layoff an employee is entitled to be returned to work if the employer subsequently increases the work force.

Other details to be negotiated may include continued insurance benefits for some period, preferential consideration for laid off employees who apply for vacant positions for which they qualify, and transfer rights to other positions in lieu of layoff.

Issues of employment security share the common theme of the union's effort to maximize job security through the imposition of negotiated restrictions upon the employer. Thus it will be your goal as management's chief negotiator to retain maximum authority to execute without challenge those unpleasant, but occasionally necessary, decisions to remove employees, either because of performance problems or work force requirements.

## 7. Promotions

Employee opportunities for promotion constitute another issue that bridges a reserved management right (whether to promote an employee) with the obligation to negotiate impact (the pay increase to accompany promotion).

Faculty promotions are totally different from promotions of support staff. Faculty are ranked, with each individual offered an opportunity to reach the rank of professor at some point in his or her career, while being continuously engaged in the same duties of teaching, research, and service. Support positions are classified within a system that defines the relative value of each position to the institution, and assigns salary ranges accordingly. A promotion for a member of the support staff is an opportunity to move to a different position that includes greater demands and higher rewards. However different these two patterns of promotion, management's basic response should be identical.

Seek to retain the maximum authority to make promotional decisions, including who is to be promoted and what the salary increase is to be. The optimal contract language is inclusion of promotions in the list of retained rights, combined with a brief reference in the pay article which notes that management may provide additional increases to employees who are promoted. If this is not feasible—and the union will exert as much pressure as possible to secure promotional opportunities—seek contract language which notes that members of the bargaining unit will be entitled to consideration for promotion, based upon their qualifications, within a system that places final authority with management, and bars arbitration of disputes about decisions made. If you cannot achieve this, consider language for units of support staff that provides for "first consideration" of qualified applicants from the bargaining unit, but reserves the right to go outside the bargaining unit when deemed appropriate; maintain the bar to arbitration of such decisions. With faculty, you may conclude that it will be necessary to negotiate promotional procedures in some detail, but seek to retain full authority over final decisions.

The union will predictably seek the greatest measure of control obtainable over promotions. For hourly support units, this will consist of a requirement that each promotion be awarded to the senior qualified applicant from the bargaining unit. For faculty, the proposal may be a detailed statement of procedures, criteria, peer control, multiple appeal opportunities, and arbitration of both procedural disputes and evaluative judgments. If unions are successful in their efforts, management will have lost control of selection of hourly staff and an important reward system for faculty.

Here, as in all the articles discussed in this chapter, you should work diligently to preserve the proper measure of the university's rights to manage the institution effectively.

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# Negotiations II: Getting Underway

To this point, except for consideration of language, the discussion of negotiations has dealt primarily with preparations for the bargaining sessions themselves. As you approach the date of the first meeting with the union's representatives, several additional actions are appropriate.

## Preparing Your Team for Negotiations

Spend some time with the members of your negotiating team preparing them for what to expect during bargaining sessions and how to handle their responsibilities. This task will be much simpler if your team includes veterans of previous negotiations as well as newcomers to the process. (Such a mix also has the advantage of combining the wisdom of experience with the freshness of new viewpoints.)

You need the negotiating team to participate fully in the negotiations process, remembering that the chief negotiator will take the lead. I call upon individual team members to address issues they are uniquely qualified to discuss, or issues on which they feel strongly. Team members understand that three general constraints should govern their comments: (1) don't open up a new avenue of discussion or deal with unrelated subject matter; (2) don't provide the union with information or evidence of an attitude supporting the union's position; and (3) remember that each of the teams at the table needs the consistency and coherence of having a chief negotiator as primary, but not sole, spokesperson.

Members of the negotiating team also offer invaluable assistance in observing and critiquing the negotiating process. In addition to seeking their analysis of data, proposals, and strategic options, I urge them to watch the members of the opposing team carefully: facial expressions, body language, eye contact, and peripheral remarks may communicate information not directly discernible in the union's written proposals or the careful comments of its chief negotiator. In addition I ask my team members to watch my own performance, noting problems of tone, clarity, consistency, or emphasis. Brief notes passed down the table can help the chief negotiator on specific problems. Finally, in extraordinary circumstances, each member of the team has the right to call for a caucus by passing me a note to that effect; this rarely occurs, but it is an important part of the protective support system for the chief negotiator.

## Understanding the Caucus

The caucus is an element of bargaining all newcomers to negotiations need to understand fully. For each negotiating session you will need two rooms, one to accommodate both teams at the bargaining table, the second a separate room to enable each team to hold private discussions. Typically either party may caucus anytime it chooses to do so. Caucuses should be brief, and used only to review very specific decisions that require confidential discussion, or to evaluate sudden and unexpected shifts in the union's posture.

Do not use the caucus to make major or complex policy evaluations, or to write lengthy (i.e., more than one or two paragraphs) passages of contract language; these activities require a more careful evaluation. Do not use the caucus as a substitute for the preparation that should have been done prior to the bargaining session.

And do not abuse the caucus. An acquaintance of mine was once working as a union negotiator, trying diligently to settle his first contract. He suffered from a nervous stomach, and had neglected to bring food to a negotiating session, which ran into the evening hours, until it was interrupted for a management caucus. For an hour and a half he waited, the acid churning painfully, for the management team to return. He later learned the management team had used the caucus to leave campus for a leisurely discussion of strategy over dinner. The union negotiator was not favorably impressed.

On my campus the union representatives once caucused during an afternoon session held after we had reached impasse, when no resolution was in sight. After half an hour, a veteran team member remarked, "I think they're up to something." "No," I replied, "I don't think so." An hour later we learned they had held a press conference in the reserved caucus room, and that evening on television news we watched the interview with the union's chief negotiator, denouncing us for our unwillingness to engage in meaningful negotiations. University representatives could not be reached for comment, concluded the reporter; that was accurate, as we were ignorantly cloistered in the room reserved for the negotiations, patiently waiting for the union representatives to return.

In short, be sure your bargaining team members understand that the caucus should be a brief interlude in the primary activity of negotiations.

## First Agreement: Memorandum on Ground Rules

When the negotiating sessions get under way, several matters will require initial consideration: the schedule and location of the sessions, relations with the news media (ideally, a blackout), the nature of records of the negotiating sessions to be maintained, the right of either party to caucus, the identity of the individuals authorized to initial tentative agreements on behalf of each party, the role if any of third parties (if this is at the discretion of the parties), the tentative nature of agreements (subject both to ratification and a final review of the total agreement), and scheduling details of the submission of proposals.

On my campus we reduce to writing agreement with the union on matters like these, recording them in a "Memorandum of Understanding" that defines the ground rules of bargaining. (*Figure 11* is an example of such a memorandum of understanding.) As we have used the device, it does not become part of the negotiated agreement; thus, it has no enforcement mechanism, except theoretically through the filing of an Unfair Labor Practice charge with the labor board. In addition to laying the groundwork for successful negotiations, discussions leading to the agreement on ground rules often provide a preview of what you will encounter when the discussions move to the substantive issues to be included in the agreement. I have seen the memorandum agreed to following five minutes of discussion, and I have watched the discussion drag on for two or three hours, in each case foreshadowing the ease or difficulty that would characterize the negotiations as a whole. The details covered by the memorandum on ground rules are important.

I suggested earlier that meeting once or twice weekly is a schedule that maintains continuity while permitting time for careful preparation and attention to other duties. It is desirable that the agenda for each session be established in advance, and that counterproposals of any length be provided

Figure 11

# MEMORANDUM OF UNDERSTANDING ON GROUND RULES

It is hereby agreed by and between the representatives of ______________________________ ______________________________, (hereinafter the "University") and the __________ ______________________________, (hereinafter the "Union") that the following ground rules shall govern the negotiating sessions between the parties:

1. Each negotiating team shall have a chief negotiator who shall be the primary spokesperson for the negotiating team. The chief negotiator may call upon a member of his or her negotiating team to provide special information related to a proposal under consideration. Each negotiating team shall include a maximum of seven (7) members. Chief negotiators shall be empowered to initial proposals when they are agreed to.
2. The chief negotiator for the University shall be ______________________________ and the chief negotiator for the Union shall be ______________________________.
3. All negotiating sessions will be approximately three to four hours in duration, unless otherwise mutually agreed on a session-by-session basis.
4. The time, date, place, and agenda of the next negotiating session will be agreed upon prior to the end of the present session, unless otherwise mutually agreed on a session-by-session basis.
5. Each negotiating team shall have the right to caucus upon its request and shall advise the other team of the expected length of the requested caucus.
6. All tentative agreements will be reduced to writing and initialled by the chief negotiator of both the University and the Union.
7. All tentative agreements will be tentative only and contingent upon the final ratification of the entire Agreement by the Union and the University's Board of Trustees.
8. Upon agreement of these ground rules, no additional ground rules will be submitted by either party.
9. Upon agreement of these ground rules, each party will submit its original proposals to the other party. Upon the receipt of these proposals, neither party shall be permitted to submit any additional proposals unless mutually agreed otherwise. Each party shall be free to counter-propose from either its own proposals or those of the other party, providing the counter-proposal(s) contain the same subject material as the original proposal.
10. All negotiating sessions will be conducted in executive session with all information held in strict confidence by the parties.
11. There shall be no press releases or other forms of public dissemination of information unless mutually agreed on in advance by the parties, or until an impasse is declared, if any.
12. Each party will maintain whatever record of negotiating sessions it deems appropriate; mechanical recording devices will not be used.
13. The two chief negotiators may meet in private to review progress in negotiations.
14. Dispute Resolution shall be in accordance with the provisions of ORC 4117.
15. Each party may bring up to two visitors to any negotiating session by giving the other party twenty-four hours advance notice of the visitor(s) attendance.

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to the other party before the session; caucus time spent in the study of extensive new proposals often leaves the other party waiting idly in the other room, a waste of time. The location of the negotiating sessions should be neutral and comfortable, with a table large enough to permit bargaining team members room to spread out their materials.

Typically the chief negotiators for each party initial documents, reflecting a tentative agreement, subject to the final review and to ratification. Although obvious, this point is critical. It is assumed that each negotiator knows what he or she has authority to agree to, and that an initialled document will be ratified by the chief negotiator's constituency, but in those rare instances when a communication gap appears after a sign-off, each party needs the opportunity to reopen an issue. The assumed rarity of these occasions should be emphasized.

## Records of Negotiating Sessions

Records of negotiating sessions are important. Our approach has been to say simply that each party will maintain whatever record it wishes, but mechanical recording devices will not be used, due to their potentially disruptive or chilling impact upon bargaining. It may appear desirable to generate some official record, approved by both parties, but unless you want the great expense of a neutral party (presumably a court reporter) to prepare transcriptions, you can find yourself spending as much time reaching agreement on the record of discussions as you are devoting to the negotiating sessions themselves. If you conclude that a joint record is feasible, consider carefully whether it is desirable. The awareness that a formal record is being maintained can have an inhibiting and perhaps chilling effect upon the discussions at the table. Some comments, particularly humorous asides and occasional outbursts, do not need to be a matter of official record.

## Exchanging Initial Proposals

Negotiations truly begin with the exchange of initial proposals. Often, by agreement, the exchange is simultaneous, to deny each party the presumed advantage of advance knowledge of the other party's positions. It is always a good idea to establish an early deadline for submission of any additional proposals, or to note that subsequent proposals will be limited to counter proposals on issues placed on the table in the initial packages. This can help you to know quickly the entire scope of issues to be discussed.

In the preparation of initial proposals, I have found it useful to work with photocopies of existing contract language. Our printed agreements are on pages that measure 5½" × 8½" (a standard sheet with one fold), and when photocopied on a full 8½" × 11" page, you have ample room for minor revisions and comments. On occasion we have reached preliminary agreement with the union that both parties will present initial proposals in this format. This approach facilitates each party's review of the changes proposed by the other. *Figure 12* offers an example of how this approach works.

## The Chief Negotiator at the Table

Several characteristics should mark your performance from the beginning as a chief negotiator. Consistency is important to the process of communicating your position effectively. If you describe three separate issues as the "most critical issue in the negotiations," the only thing the union can know with certainty is that your position on the issues is unknown. Your demeanor should reflect calmness, courtesy, and civility; profanity is never a good idea, however temptingly appropriate it may seem. Discipline may require the suppression of emotions from amusement to anger, disdain to contempt; revealing them are always tactical errors, problems you do not need.

Integrity is also important, both in its usual sense of honesty, and in its primary meaning of wholeness or soundness. Every chief negotiator needs to be able to rely upon the word of his or her counterpart, to know that an agreement reached will be ratified, that a statement of fact for the record

Figure 12

**PROPOSAL BASED ON PHOTOCOPY OF EXISTING AGREEMENT**

*Proposal:*

**Article 28: "Term of Agreement"**

**28.1** This Agreement shall become effective at 12:01 a.m. on July 1, 19 ___, and remain in effect until 11:59 p.m. on June 30, 19 ___.

**28.2** Either party may notify the other that it desires to modify this Agreement or to negotiate a successor agreement in accordance with O.R.C. 4117.14(B)(1)(a)(b)(c) and SERB Rule 4117-9-02.

will be accurate. This value transcends ethics and is essentially pragmatic; negotiations are scarcely possible without a person on the other side of the table whose word is good. Be careful to make no commitments you cannot keep, and to honor those you do.

## Outlining and Analyzing Initial Proposals

When you have received the union's initial proposals, it is a good idea to prepare an outline, discussed in Chapter 8, summarizing the positions of the party on each issue, as those positions relate to each other and to the existing agreement. Share this outline with the union as a working guide to who seeks what.

Other secondary materials can be useful. A one-page display of rectangles, each representing one article in the agreement, crossed off when initialled, can give you a single visual image of the "big picture" and the progress you are making toward settlement. Illustrations of specific proposals can be helpful. Once, when we encountered disagreement from union representatives concerning the impact of their salary proposal, a one-page display of their proposal as it would modify the salaries of the members of the union's negotiating team, year by year, was helpful. The communication process at this point is four-fold. You seek both to understand the union's proposals and to be certain that the union representatives fully understand them; they need similarly to understand your proposals, and through the interaction may be able to assist you in clarifying your own positions. Do whatever you can to facilitate the total understanding by both parties of all issues on the table.

By the time you have completed one "walk through" of the proposals on the table, probably signing off on several standard articles, you should have a fairly good sense of the union's overall strategy and agenda: what it is seeking to achieve, which issues are of the greatest importance, and where it can be expected to move in order to secure advantages elsewhere. Analyze the union's overall position with care, and take pains to see that your specific actions relate to an overall strategy of getting to settlement.

## Identifying Divergent Interests

You may at this point identify divergent interests across the table. The union's negotiating team may be divided on certain issues. In addition, the team may be keenly interested in positions you believe the bargaining unit as a whole does not share. The union staff negotiator, employed by the affiliate, may value more highly than members of the negotiating team certain provisions that reflect the interests of his or her employer (e.g., agency shop). You cannot take overt action to exploit these divergencies, except at great risk to the negotiations, but you need to recognize them, evaluate them, and relate them to your analysis of where the union will eventually settle.

## Moving the Process Forward

Negotiations may tend to stall after the initial flurry of sign-offs on uncontroversial provisions of the agreement. Both parties may be jockeying for position, each reluctant to begin the long process of trade-offs (discussed in the following chapter) that will eventually lead to settlement. If this appears to be occurring, try to find a way to move things along; voice your concerns at the table and try to see that the union understands that it shares with you an interest in orderly progress toward resolution.

In one such situation, with negotiations seemingly stalled, I tabulated the number of words in the proposals we had initialled to date, noted the number of hours spent at the table and the number of days that had lapsed, and did a rough projection to closure that suggested at this rate we would need two to three years to get an agreement. I shared it with the union, pointing out that it was simplistic and unreliable, but the awesome prospect of spending years at the bargaining table was sufficiently distasteful to motivate both parties to seek ways to move the process forward.

Look for ways to reduce the number of unresolved issues. Your initial outline will have shown most issues unresolved, with a few standard provisions immediately initialled. As others are settled, cross them off the list, and begin a second outline, showing in summarized form issues tentatively agreed to. With luck, like a seesaw the first list will decrease in length as the second list grows. Get as much off the table as you can, as quickly as you can. If nine subsections of an article with ten subsections are settled, get a sign-off on the article that notes that the tenth is unresolved—"set aside" as a "hanger," as such issues are sometimes called. Narrow the open issues to the extent you can.

## Dealing with Errors from a Long-Range Perspective

Errors will occasionally occur in the negotiations, and when identified require speedy attention. If you discover that you have given the union inaccurate or misleading information, set the record straight immediately and in writing. If, based upon what you have told them, they have agreed to a proposal, offer to toss it and put the issue back on the table. If the union's chief negotiator makes an honest error, display the level of consideration you would like to receive if the roles were reversed.

There are fine lines here. No chief negotiator is responsible for making certain that his or her counterpart exercises good judgment, reads proposals carefully and with comprehension, and understands the details of the obligation to represent his or her constituency. If, however, the union's chief negotiator gives you a revised proposal that reflects an inadvertent omission of a sentence that benefits the bargaining unit and has already been agreed to, it is a sound tactic to advise the chief negotiator of the problem, discreetly and away from the table, rather than signing off in silence. The ill will you would produce by exploiting this error would be far greater than the advantage gained. This is not merely the morality of "do unto others," it is the establishment and maintenance of credibility and integrity. You trust that your efforts will be reciprocated.

Closely related to this concern is the long-range viewpoint you should maintain throughout bargaining, and use as an argument whenever it is relevant and appropriate. Remember that any advantage you secure in contract language is guaranteed only for the term of the agreement, two or three years at the most. If the union discovers that you secured an advantage through exploiting an inadvertent error, or if your administration of the provision is subsequently deemed to be unreasonable or unfair, you will have to deal with the issue again in two or three years, and the union's position will predictably be more strongly entrenched then than it is now. You do not need short-term victories that lead to long-term problems. Be sure that the union leadership understands that you are negotiating from this perspective.

## The Sidebar

A special form of union relations that may be helpful at this point is the sidebar, a private meeting between the two chief negotiators to discuss the progress that has been made, the problems that remain to be resolved. Such meetings can permit a level of candor that is not feasible in the presence of the two teams, and can help each chief negotiator get a better understanding of the other's viewpoint. The potential usefulness of the sidebar will be determined by two elements: the degree to which you can trust your counterpart's honesty and integrity, and the extent to which you believe he or she can deliver on commitments made. If your counterpart has a record of major problems in either of these two areas, the sidebar may be of no value. Sidebar discussions need to be off the record, in the sense that neither party subsequently is to be quoted by the other as part of the negotiations process, but be certain that your president is kept fully informed of the fact and the substance of these discussions. Candor has its limits. Your counterpart may share anecdotes with you concerning the viewpoints argued by members of the union's negotiating team, and may in turn probe for information about which individuals on the board or in the administration or on the bargaining team are the key figures behind the university's position on various issues. Don't reveal it. Ever.

## Summary

At the beginning of negotiations, be certain you have prepared members of your negotiating team carefully for what they will encounter in the dynamics of bargaining, protocol at the table, and the uses of the caucus. Seek agreement with the union on a "Memorandum of Understanding" that will define in whatever detail necessary the ground rules for negotiations. Maintain careful records of negotiating sessions. Work carefully at the bargaining table to advance the university's positions with consistency, civility, and integrity. Outline and analyze the initial positions of the parties as soon as they are shared, and do what you can to see that everyone on both sides of the table understands the issues thoroughly. Watch for divergent interests on the union side, and relate these to your overall strategy. Move quickly to correct errors you make, and reciprocate in parallel union efforts; remember the long-range strategies that govern successful negotiations. Look for opportunities to move the process forward, seeking to break out of a deadlock if one develops. Consider a sidebar with your counterpart to assist your efforts to find the resolution.

At each step, try to keep it moving.

# 13

# Negotiations III: Managing Trade-Offs

At the heart of collective bargaining is just what the term suggests: two parties, each with something the other wants, each needing something the other has to offer, both wanting to find some combination of give-and-take that will add up to an overall agreement. Diffuse and complex entities delegate their authority to represent them in matters related to employment, to speak for them collectively. Negotiation is the process of mutual discovery of the combination of provisions that will be mutually acceptable to both parties.

## Negotiations in Daily Life

At its simplest level, all of us routinely engage in negotiations in our daily lives. I walk into an automobile dealer's showroom, find a vehicle I like, and ask the salesperson how far below the sticker price the car can be purchased for. The sales representative thinks for a moment, probably asks me about financing and trade-in, and responds—negotiations are under way.

Some people with extensive experience and great skill at buying and selling perceive this activity to be analogous to collective bargaining, but it is quite dissimilar in several ways that serve to illustrate the nature of bargaining. The automobile purchase is basically a one-dimensional deal, a single price to be paid for a product sitting there on four wheels. Collective bargaining is exceedingly complex, with as many pieces as a jigsaw puzzle, and like the puzzle all the pieces on the table must ultimately be in place relative to each other for the successful picture to emerge. More importantly, I have no obligation to consummate my bargaining with the automobile dealer. If I am not satisfied by the final offer, I can go to another dealer, or I can forget the idea and continue to drive my clunker for another year or two. I face no penalties for walking away from the discussions. Collective bargaining does not afford this luxury; your union is the sole available provider for the agreement you are seeking, and your failure to get that agreement entails some measure of risk. No particular timelines govern the automobile purchase; you go to look at a new car when the spirit moves you, and close the deal when you feel like it. Collective bargaining proceeds under tight time constraints, some externally imposed, and again carries risk at certain points in the schedule.

If negotiations with the union are far more complex and difficult than buying an automobile, the final agreements involved have certain characteristics in common. A union agreement is simply an overall contract that binds members of the bargaining unit who are employed during its term to provide specified services to the employer, in consideration for specified compensation and other benefits. The employer, in turn, is bound to honor the terms of the agreement, paying the specified compensation and complying with the other provisions agreed to. However complex, it is in the end simply a deal.

## The Order of Negotiations

You get to total agreement in bits and pieces, typically beginning with the easiest elements of language. Certain stock provisions are neutral in adversarial advantage, in that they are equally in the interest of both parties, or they flow out of statutory requirement, or they are obviously desirable provisions about which there is little debate. These tend to come off the table first. Thus "separability," which protects the remainder of the agreement if a single section is declared void, is usually initialled in short order, and should be followed quickly by articles addressing "recognition," "scope of unit," and several other standard items.

Chief negotiators often divide proposals into two broad categories, "language" and "money." Language refers to proposals that have no direct economic impact, and money refers to salary issues and other proposals having an identifiable cost. The standard sequence in negotiations is to resolve language issues first, money last. Follow this sequence to the extent you can, but do not be surprised to find several major language issues remaining unresolved near the end of negotiations. An exception to this sequence may involve economic issues that are defined by statute. Your provision on holidays, for example, will have an obvious economic impact, but if your agreement simply restates the statutory provisions that would apply in the absence of an agreement, it is not really a money issue, and can be settled early. Often, final movement by one party on money works as leverage to secure sufficient movement by the other on language to get the parties to final agreement. A general rule for a management chief negotiator is never to settle on salaries except as part of a total tentative agreement, as money is invariably the strongest leverage you will have.

As the negotiations progress, you move into trade-offs, the arena of *quid pro quo*, in which either party may say to the other, "I'll give you this if you give me that." Different negotiators handle the detailed application of this principle differently. Some will scarcely concede a word to the other party without a signed-off concession in return; others understand that minor modifications of language that help each party do what it needs to do are the essence of a mature bargaining relationship. Flexibility is better.

## Dealing with Linkage

Some issues are obviously linked by logic to others, and "linkage" in bargaining refers to the tentative offer of one party to agree to a proposal of the other (often modified) if the other party reciprocates on another issue. Some are obvious. Grievance arbitration—the agreement to submit disputes on contract language to binding third party determination—logically is linked to an acceptable "no strike provision" and a proper definition of what is grievable and arbitrable. As a management chief negotiator, do not agree to provisions that primarily benefit the union without securing corollary provisions that benefit management. "Union rights" are paralleled by "management rights" or "retained rights," and perhaps bridged by a "union-management relations" provision, and all should be part of a single package.

Some issues are settled on their own terms, without reference to others, because the parties have a mutual interest in securing agreement on them. Others—particularly union proposals—may sit out there in limbo for months with neither agreement nor counter offer from the other party, because the other party wants the agreement to remain silent on the issue.

Other issues may have no logical linkage to any other, but may be forced into arbitrary linkage as part of the overall agreement. They may end up on your short list of unresolved issues near the end of bargaining, proposals that are desired by one party and available only as part of the overall deal. ("The relationship between your agency fee proposal and our salary proposal is simply that you want the former and we want the latter.")

Dealing successfully with linkage requires that you evaluate in detail significant subsections of the agreement, determining where you are willing to go on some issues in order to get what you want on others. Your work will be governed by two paradoxical principles: (1) some provisions sought by the union will be categorically unacceptable in any conceivable context of trade-offs; and (2) you must agree to concessions in some areas if you are to gain what you want in others. Reconciling all of this is the art of negotiation.

When you place "linked" or "packaged" counter-proposals on the table, it is important to state explicitly the linkage involved; if you place an unqualified proposal on the table, you are required to sign it immediately if the union agrees to it. Your "packaged" offers may serve several purposes. You move subsections of the agreement toward resolution, narrowing the scope of unresolved issues. You communicate clearly—and irrevocably, you should remember—several provisions you are willing to agree to in a certain context. The union should be engaged simultaneously in the same process, and out of this interaction the parties should be able to identify the preliminary outlines of a final settlement.

## Getting the Issues to One Page

At some point it will be possible to outline the major unresolved issues on a single page, and this document, drawn with care, can be the working paper that leads to final agreement. If you are fortunate, the economic issues will not have many companions. You can display in two opposing columns the summary of where the parties are, leaving a third column blank to outline the final resolution. You can know with certainty that the final agreement will emerge, issue by issue, between the two positions, or as a combination of some positions from each of the two columns, or as a combination of both.

The agreement could come together at this point, although there may be involvement by a third party, or the psychology of settlement may require a preliminary blowup of some sort.

## Summary

Refine your understanding of the concept and the process of negotiating. Analyze the issues under consideration and categorize them as: (1) non-economic issues on which the parties have mutual interests or minimal differences, (2) non-economic issues that include substantive differences between the positions and interests of the parties, and (3) economic issues. Seek to deal with the issues in that sequence. Look for issues that logically relate to each other, and try to link these together as a means of pushing negotiations forward. Reduce the remaining open issues to one page, when the negotiations have adequately narrowed them, and use this display as a tool to explore potential patterns of settlement. Do not settle on salaries, ever, while other issues remain unresolved. Look for a combination of tradeoffs and compromises that will lead you to a final tentative agreement.

Through the entire process, remember that you are agreeing to provisions of value to the union, provisions worthy of consideration, and you are both entitled to receive and obligated to secure reciprocal consideration. As an esteemed colleague once observed in an off-the-cuff fashion, "I guess if we understand now that we're selling it for a living, the point is we don't give it away free any more."

Good counsel.

# 14

# Strike Preparations

At some point in the negotiations, certainly no later than one month before the expiration of the agreement or before the earliest possible date for a strike, it will be prudent to have developed a strike contingency plan. The level of detail necessary will be determined by the size and nature of the bargaining unit, by its history of going on strike, and by the perceived possibility of a strike occurring. You must assume that the union leaders will learn that you are making these preparations, and you should not be surprised if they tell you that your actions reflect a failure to negotiate with them in good faith. However, it is extremely unwise to take no action until you have received the formal notice of intent to strike, when under the best of circumstances you will have a great deal to do in a very few days.

A subset of your strike preparations should be consideration of other possible "work actions" that fall short of a full-scale strike. Consider the problems of a large number of the bargaining unit reporting off ill on a given day, a tactic not uncommon among police units, where it is known as the "blue flu." Consider what would happen if members of the bargaining unit refused to perform certain duties they are arguably not required to do; for example, where would you be if faculty restricted their activities to teaching classes? (This is a variant of the industrial "slowdown.") It will probably be impossible to anticipate the variety of tactics a creative union leadership may execute to bring pressure to bear on the negotiations, but you should understand that the strike is only one of a number of options the union may choose to exercise.

## Strike Goals and Management's Response

If the union takes its membership out on strike, the immediate objective will be to inflict the greatest possible short-term damage to the operation of the university, to come as close as possible to requiring management to close the university. The goal will be to pressure management to concede to the union's position on issues unresolved at the bargaining table.

Management's response, conversely, will be to minimize the impact of the strike by maintaining, as nearly as possible, the normal operation of the university. A comprehensive management response will require extensive planning and preparation long before the earliest date a strike can occur.

## Unit Determination and Strike Planning

The initial activities related to strike planning should have occurred months earlier, during the unit determination process. As discussed in Chapter 1, bargaining units are determined and certified as being appropriate by the labor board, often based upon a negotiated agreement between the parties. Initially at dispute are always a number of staff members who are to some extent supervisory, confidential, or managerial, but not to a sufficient degree that the union will immediately agree to their exclusion. In negotiating the details of which borderline positions are to be included in the unit, the university's representative should remember that the composition of the group excluded will be critical to the continued operation of the university during a strike, and should act accordingly.

## Review of Unit Strike History

A major element in strike preparations is a review of the history of this unit. Have they gone out on strike previously? Over what issues? What percentage of the bargaining unit honored the picket lines, and how many reported for duty as usual? Were previous strikes viewed as having been advantageous to members of the unit? What does all of this suggest to you about the probability of a strike at this time? What preventive measures does past experience suggest?

If you are negotiating a first agreement, or if you have had no previous experience of strikes represented by this union, you will have to rely on whatever information is available to you. The tone of relationships at the bargaining table, distances between the parties' positions on key issues, and statements made by the leaders of the union are all important indicators, although all can be misleading.

## Analysis of Work Force Impact

Another key element in contingency planning is an analysis of the impact of the work force. For non-faculty units, what functions do these staff members serve, and to what extent will the operation of the university be impaired in the event of a strike? If persons not in the bargaining unit are engaged in the same or similar activities, approximately what percentage of the work is performed by those in the unit? What alternate sources of services will be available? Are there contractors who will either perform these services off campus or send their staff members to the campus? Do these contractors honor picket lines? What are the possibilities and problems of hiring temporary employees? Are you approaching critical points in the institution's calendar that pose special problems? To what extent can the services provided by this group of individuals be deferred, or reassigned to others? What support or ancillary services can simply be suspended for a time without compromising the basic mission of the university?

For faculty bargaining units, you will need to know precisely what portion of the courses beings taught in the current term are assigned to members of the bargaining unit, and how many are taught by people out of the unit (adjunct faculty, teaching assistants, chairs, other administrators). Your planning should assess your ability to replace striking faculty temporarily on very short notice, through assignment of administrators on a substitute basis, use of additional adjunct faculty, and perhaps by the employment of additional teaching staff on a temporary basis.

## Surveying Management

These are the general questions, and to get the answers you must go to the college or department level. We typically consult department heads for non-faculty units, and ask deans to do the basic planning related to faculty. Each is asked to make several assumptions about duration of a strike (one week, two weeks, three weeks, or longer) and to analyze in detail what actions or resources would be needed to maintain the operations of the department during a strike. You should also solicit each department head's assessment of how many of his or her staff would support a strike. The responses of the department heads should be prepared and returned to a central collection point under the tightest possible security, and the collected, collated reports should be one of the few absolutely confidential documents in the negotiations process. (It is critical to deny the union knowledge about the extent of damage you believe it could inflict by a strike.)

## Analyzing Ancillary Sources of Services

Every university relies to some extent upon non-employees to provide goods and services. Goods are delivered daily to the campus; construction firms build, renovate, and repair university structures; and contractors typically provide some support services (e.g., custodial services, food services). Inventory the firms and individuals who provide you with these services, and determine in each case what impact picket lines on your campus would have on the delivery of those services. (If your existing contracts with these providers do not require them to maintain services during a strike, see if your attorneys can close that loophole.) Find a method of meeting these needs in some alternate manner if necessary.

## Analyzing the Physical Campus

An element that may also be relevant to a strike plan is the physical nature of the campus. From the union perspective, the ideal work site in a strike has a single point of ingress and egress. With this as a choke point, a single picket line is required to assure that anyone who reports for duty will be seen, recognized, and subjected to the psychological discomfort of crossing the picket line. My campus, like most, is totally open, accessible from all directions. You can get a number of bits of information to file for future reference by taking a close look at your campus from the tactical perspective of the union strike manager who must work out the many details that are part of any successful strike.

Years ago I had an office with a large window opening on the central campus. We reached agreement that followed difficult negotiations, including the threat of a strike, which was not called. After agreement was reached, the union chief negotiator came to my office to work out a few remaining details. He had served as an army officer years earlier. While I prepared a document to record our understanding, he strolled over to the window and gazed intently at the buildings encircling the green core. He shook his head.

"This campus is a goddam sieve," he said.

He was right.

## Understanding Your Legal Options

Review with legal counsel the potential strike before it is imminent, and be sure you have a precise understanding of the legal context, and the options available to you. If the strike is unauthorized, you may be able to go to court to seek a back-to-work order, or to the labor board for a similar mandate. You may need to seek injunctive relief to limit the number of pickets or to bar activities interfering with the operation of the university. You may have available several sanctions that can be imposed upon bargaining unit members on strike, depending upon the circumstances, and you need to understand fully the legal implications before you make the policy decisions.

## Preparing to Monitor Attendance

You need to design a special plan for gathering precise information during a strike on which members of the bargaining unit report for duty and which are out. You will need to secure this information daily. Of those faculty or staff who are absent, you will need to know (to the extent you can determine it) who is on strike, who has reported off ill, who is truly ill, and who is simply unaccounted for.

## Developing a Communication Program

The communication network described in Chapter 8 will require adaptation to deal with a strike situation. You will need a system that keeps board members informed on all significant developments. You will need to communicate with the administration daily, advising them of procedures and activities designed to maintain the operation of the university. You will need daily press releases to inform the public of the extent to which you are continuing to operate. You will need to be able to communicate to the students, trying to make certain they understand why you are pursuing your chosen course of action. You will need the ability to communicate quickly and directly with your faculty and staff, those on strike as well as those reporting for duty, to keep them informed of developments and to communicate your interpretation of the events that led to the current situation. Finally, you will need to be certain that during the strike you maintain communication with the union leadership.

Each component of the communication system should be designed carefully, assigned to a specific individual, and reduced to writing as part of your overall plan.

## Assembling the Plan

Having taken these actions and gathered this information, you should be in a position to finalize a strike plan that describes in detail what specific actions are to be taken by whom at what time in order to minimize the impact of the strike. The individuals responsible for implementing the key elements of the plan should meet to review the plan in detail, making certain that each understands exactly what his or her duties will be.

## Final Pre-Strike Consultation

Typically, the union must provide advance notice of its intent to strike. In the period between receipt of notification and the strike deadline, final consultation is needed with a number of individuals and groups.

1. **The Board.** Be certain there is full understanding and agreement between the board and the administration that the issues unresolved at the bargaining table are of sufficient importance to justify accepting the consequences of a strike.

2. **The Management Team.** Meet with your deans, chairs, and department heads to review the situation and to communicate the university's decision to stand fast in the face of a threatened strike. Let them know that everything possible will be done to alleviate the problems created by the strike, and to support the continued operation of the university. Give them detailed instructions on any special assignments they may have for the first day of the strike, and advise them of the details of the communication system that will keep them informed of developments as they occur.

3. **The Union.** Meet with the union representatives, to try once more to find a negotiated settlement of your differences. As always, try to keep the discussion impersonal and unemotional. Without revealing details, let them know that the university has prepared for this contingency, and will not capitulate simply because a strike has been scheduled or will occur. Make plans for the parties to remain in touch during the strike.

4. **Other Unions.** Assuming the agreements with each of the other unions on campus each contain a no strike provision that bars the other bargaining units from walking out in sympathy, remind each of the other union presidents of those provisions. Confirm it in writing.

5. **Legal Counsel.** Keep your counsel informed at each step, advising him or her of any new developments that may affect the legal aspects of the strike. Be certain that counsel will be available for consultation when the strike begins, and prepared to move quickly if legal action is required.

6. **Student Leadership.** Meet with the representatives of the student leadership to explain the university's position. Be sure they understand that you will be seeking to maintain, without interruption, the services the university was established to provide for them. Let them know that the university will seek ways to avoid or at least minimize any hardships the strike may cause for them.

## Summary

However diligently you pursue a negotiated settlement at the bargaining table, failure is always possible, and you need to be prepared for the eventuality of a strike. No later than a month prior to the earliest possible strike date, you should have developed a strike plan that emerges from the following activities. Review the strike history of this bargaining unit, relating it to the environment of the current negotiations, as a means of assessing the probability of a strike. Analyze the impact of the bargaining unit upon your work force as a whole, considering the extent to which you could maintain basic operations for some period of time if the unit walked out. Solicit departmental contingency plans from chairs and heads, asking each to evaluate the probable impact of a strike and to consider what resources might be needed to maintain departmental operations. Take steps to minimize any disruptions a strike might cause in the delivery of goods and services by non-employees (e.g., contractors). Analyze the physical campus from the perspective of the union strike manager. Get detailed advice on the legal options that may be available to you during a strike. Prepare to have exhaustive records of attendance or strike participation by bargaining unit members during a strike. Adapt your communication network to disseminate information to various constituencies during a strike.

Prepare a plan that describes in detail the activities that will reflect your efforts to manage and contain the impact of a strike. In the final days before a strike, consult the board to be certain there is mutual understanding and support for the action to be taken. Be certain legal counsel is prepared to advise and represent you. Meet with the management team to be certain its members are clear on their responsibilities in the coming days. Keep working with the union representatives to pursue a negotiated settlement, and when relevant, remind leaders of other unions on campus of provisions that bar or restrict their support of the union planning the strike. Be certain the leaders of the student body understand your position and your goals.

On a final note, you may find strike contingency planning distasteful. The faculty or staff involved may not be the abstractions suggested by the legal definition of "members of the bargaining unit," but rather men and women you have known for years, and liked, admired, and respected. It is not particularly pleasant to analyze their contemplation of an action that can hardly fail to embarrass or damage the university you have together worked to serve. But when collective bargaining confers upon them the legal right to strike, it simultaneously lays upon the administration the corollary obligation to respond.

# 15

# Dealing with Third Parties

Negotiations often involve some form of third party intervention: the entry of a neutral party who in one fashion or another seeks to facilitate the process of getting the two primary parties to agreement. Third parties may enter negotiations by a number of routes, and in different situations play any of several roles in the process.

## The Role of Mediators, Fact-Finders, and Arbitrators

It is important to understand and remember the different roles played by third parties. A mediator seeks merely to bring the parties together to any agreement that is feasible, without regard for what may be considered equitable or reasonable to an outsider. This is generally accomplished by persuasion, pressuring each party to compromise, to move somewhat on its position, with the mediator often going back and forth from one sequestered party to the other, leaning on each in turn to show some movement. Mediators are sometimes criticized for simplistically trying to get an agreement that splits the difference, by cutting it down the middle (known as "baby-cutting"). This is hardly a fair criticism, as very few agreements, mediated or negotiated, are ever settled precisely on one party's terms.

Fact-finders examine the record of the negotiations in order to determine what has occurred, to establish the positions held by the parties, and thus to create a record of relevant fact. The prospect of intervention by a fact-finder (whose findings are eventually made public) is presumed to motivate each party to engage in good faith bargaining, or to face the consequences of being exposed for its failure or refusal to have done so.

Interest arbitrators look at the positions of the parties and issue an award that defines a settlement the arbitrator concludes is appropriate. An interest arbitrator may write his or her own version of a final settlement, or he or she may choose the "final offer" of one party over the other, either in totality or on an issue-by-issue basis. In some situations the award is binding upon the parties, and becomes the agreement; in other situations the award is advisory to the parties, and may be rejected by either side.

## Variations in Third Party Intervention

The number of variables in this process make it impossible to suggest in any detail how to deal with third parties in any given set of negotiations. Each of the functions described above may be performed by a panel as well as by an individual. The persons performing these functions may vary in approach from the icily formal to the extremely casual. In addition, third parties often have great latitude in establishing the procedures to be followed in fulfilling their function. Thus, one fact-finder may want to proceed through the casual interaction of a three-way conversation over coffee. Another may want a formal record based upon the sworn testimony of witnesses from whom a fact basis is adduced by examination, cross-examination, and the formal introduction of documentation; this approach, conducted in accordance with formal rules of evidence, may culminate in closing arguments followed by post-hearing briefs. The extent to which a third party will control the process, as opposed to serving the parties in a manner they define, may vary also. Finally, the roles and functions may blur or shift during the involvement of a single third party, with a mediator defining the terms of a tentative agreement and attempting to impose it on the parties, or an arbitrator pausing to try to mediate a solution.

## Exercising Options in the Role and Selection of Third Parties

Despite the impossibility of speaking in detail about dealing with third party intervention, several general observations may be made. The two primary parties often have a great deal of latitude in determining the nature of third party intervention, including whether or not it will occur. If this is the case, your initial analysis and planning will need to include consideration of this element: whether a third party's involvement is desirable, and if so how it can be structured to advance your interests. If, conversely, you are in an environment that mandates third party involvement at a certain point, this too will have to be integrated into your planning from the beginning.

In addition to playing a part in defining the role, the parties may have a voice in the selection of the individual or individuals who will perform it. If this is the case, the credentials of the candidates need the closest possible examination and evaluation. Your counterparts at other institutions at which the candidates have been involved are a good source of information, and management consultants may be available who can provide information to assist you in this evaluation. Reviews of awards or recommendations issued by a candidate may be helpful. You are seeking an intelligent and experienced individual who is able to grasp complex issues quickly and move to reasonable conclusions based upon available information; you do not want a third party with a reputation for exceeding the stated scope of authority, displaying a pro-union bias, or routinely having his or her recommendations rejected.

A problem unique to faculty negotiations is the intervention by a third party unfamiliar with the details of university life. Certain aspects of faculty personnel policies and practices have few if any parallels outside academe. Tenure review and other forms of peer review are one example. Faculty workload, often a jungle even to those who work with it regularly, is another. If issues peculiar to academe are unresolved as third party intervention approaches, the two negotiating teams should make an extra effort to get them off the table before the arrival of the mediator or fact-finder. Similarly, you may want to use academic experience as one criterion in evaluating potential third parties.

## Preparing for the Third Party

Preparation for the third party should be done carefully, with a full awareness that this is yet another audience, quite different from the president, the provost, the board, the union, or the media, different in perspective, in level of familiarity, and in role. For this reason, your communication of your position will require still another adaptation. The essential information needed initially will be a list of unresolved issues and the positions of the parties on each. This should be prepared in outline summary form, with the language of your proposals as back-up detail. You should have prepared external comparative data on salaries (for comparable faculty or staff elsewhere, the current pattern of settlements by comparable employers) and internal data (settlements or increases for other groups). The data should be communicated carefully, clearly, and concisely. If you are arguing the relevance of ability to pay, this will require careful documentation and communication. If there is a dispute as to whether certain unresolved issues are outside the proper scope of bargaining, your position will require careful legal research, documentation, and communication.

Understand that the "record" of the negotiations will be redefined for purposes of third party involvement. From your perspective, the record may include all the documentation involved from the beginning of the planning process, the thousands of pages of draft proposals, initial proposals, notes of bargaining sessions, handouts exchanged, memoranda of explanation, etc. In addition, you may think of the record as including the countless discussions between the parties, at and away from the bargaining table. The third party will not have access to most of that information and will not be interested in it. Rather, he or she will essentially look at the record of: (1) specific proposals submitted by each party on issues that remain unresolved; (2) statements of fact unchallenged as to accuracy, although often contested as to relevance and/or significance; and (3) arguments of the parties as to what pattern or resolution each believes to be appropriate and acceptable.

Careful and effective presentation of appropriate data is critical. Third parties intervene only briefly, late in the negotiations, and on the basis of a relatively quick examination of the record established for them reach conclusions about where the negotiations should end. They tend to have little interest in the subjective, idiosyncratic details that may have determined the course of the negotiations to this point, concentrating instead on the issues. They generally have a predilection for basing evaluations and determinations of salary issues upon comparative considerations, for often there will be no other feasible approach.

Third parties may give considerable weight to comparisons of certain union or management proposals to provisions contained in other union contracts on your campus, or to the benefits extended to staff excluded from bargaining. If you have maintained a consistent position on a given issue in all agreements and personnel policies, and the union is seeking to break new ground, be certain the third party understands the precedential problems this is certain to create for you. For example, on my campus the only provision we have ever agreed to on subcontracting is a simple statement that we will not subcontract work if it results in layoffs; otherwise we retain the absolute and unqualified right to subcontract. Third parties have given that pattern great weight as they have evaluated union proposals which would have restricted our ability to subcontract.

Caution is in order when discussing the negotiations with the third party, either alone or in the presence of the union negotiator. Perhaps the first thing the third party will do is to evaluate the credibility of the two chief negotiators, seeking to sort out the rhetoric from the reality, the posturing from the true positions. They often read signals adroitly, sizing up a situation through analysis of inadvertent disclosures in casual conversations. As in your discussions with your union counterpart, proceed with caution.

## The Advantages of Third Party Intervention

Third parties can be helpful to the negotiations process, by bringing the freshness of a new perspective to what will by now be a set of old differences. They can move the negotiations forward by asking each party blunt questions they may not have heard from the other, doing so with a candor the parties have avoided, perhaps jolting them in the process to a reconsideration of the wisdom of their positions. The union—or management—may have concluded that mediation is a necessary ritual prior to settlement, in order to be in a position to assure its constituency that it has left no stone unturned in its efforts to attain the best possible settlement without contemplating a possible strike.

## The Limitations of Third Party Intervention

Third parties also have their limitations. Arguably, the prospect of their intervention can in itself deter bargaining between the parties themselves, as one or both may believe that an advantage can be gained by bringing the third party into the process. The prospect of intervention may also lead one or both parties to hold back on at least some of its positions, on the assumption that third party involvement will require additional movement, and thus one must "save something for the mediator." Experience on my campus tends to support these concerns. Before third party intervention was mandated by law in 1984, we successfully completed seven rounds of negotiations with two bargaining units, and only once brought in a mediator. Since 1984, in six rounds of negotiations, only one has been resolved without third party involvement.

Finally, you probably will not get what you would like to receive by way of support from a third party. By this point in the negotiations you may feel deeply frustrated at your inability to secure agreement on terms you have offered and believe to be reasonable. You may believe that your position would be ratified by the bargaining unit, if the union endorsed it. (Your union counterpart, by odd and recurring coincidence, can be expected to have reached precisely the opposite conclusions.) The third party will not enter this foray in order to declare publicly that one party is the moral and intellectual superior of the other, and entitled to due respect for it. Third parties may be startingly candid in private discussions with you, not only on the issues, but on the performance of your counterpart as well. Nevertheless, his or her efforts for the record will consist simply of seeking a solution that has the best prospects of gaining acceptance while causing minimum hardship for either party. The third party will also seek to avoid or to minimize any perception of having shown preference to one party over the other in any improper fashion. All of this is, of course, as it should be.

## Summary

To summarize, I suggest that you build the element of third party intervention into your initial planning efforts if it will or may be an element in the negotiations. Evaluate carefully those areas in which you may have choices that control or shape the nature of third party intervention. Evaluate carefully candidates for the third party role. Prepare your position in detail, remembering that the third party is a new audience, and often an extremely important one. Bear in mind the neutrality and the limitations that are inherent in the third party's participation. And hope for the best.

## 16

# Negotiations IV: Getting to Closure

At some point late in negotiations, the psychology of settlement will begin to set in. It may appear after a third party has intervened to try to move the process forward, or it may follow a hiatus in bargaining involving impasse. Or it may emerge undramatically, after long weeks or months at the bargaining table.

## The Emerging Agreement

Whatever the circumstances, there will develop an awareness by both parties (at least the chief negotiators) of the basic details of the settlement, an awareness that may become a sense of resignation that this package—invariably lacking provisions that each party sought—will be the best agreement that can be achieved without taking significant risks that cannot be fully known in advance.

Evaluate the outlines of any final agreement carefully in the context of your goals and objectives in the negotiations. Look carefully at the balance sheet in terms of the desirable versus the feasible, remembering the adage that most successful labor agreements reflect a roughly equitable distribution of dissatisfaction. If either party secures everything it seeks, the other party may subsequently extract a price in labor/management relations and in subsequent negotiations.

One final check with the board may be necessary at this point. If there is any question whatsoever about the settlement conforming to approved parameters, be sure you have the authority before proceeding. What seems to you a minor deviation may be significant to members of the board, and you do not want to learn this after you have signed a tentative agreement.

## Expiration Date as Pressure Point

The approaching expiration of an existing agreement carries with it various prospects that often work to encourage settlement. The union may ask itself if a rival union—or even a movement to oppose further representation—may emerge from the void of an expired agreement. What about the union's cash flow from dues deduction? Faced with an administration that theoretically enjoys great latitude following the expiration of an agreement, what changes might be imposed unilaterally? Management, conversely, has its own list of things to worry about if agreement is not reached. Most obviously, the threat of a strike may loom, with all the problems that can entail. In a more general sense, failure to reach agreement with a major unit may be the destabilization of an important relationship, carrying with it any number of disruptive possibilities best avoided.

Experienced chief negotiators on both sides of the bargaining table analyze carefully the potential pressure points related to the expiration of an agreement, and to the extent it can be done legitimately, they exploit them.

## Time as Pressure Point

On several occasions in my experience, time has worked for management as a major pressure point in getting to closure, sometimes with the management team actively pushing events, sometimes with the events needing no assistance. A major issue in one round of negotiations was the possible retroactivity of a salary increase to the beginning of the fiscal year; by June, the final month of the fiscal year, we had made it clear that at the end of the year the institution's fiscal books would be closed, and salaries for that year would be a matter of history, not subject to retroactive modification. Agreement was reached and ratified in June. In several rounds of faculty bargaining we approached a June 15 expiration date that immediately preceded summer session, with its usual opportunities for supplemental faculty income. Faculty uncertainty about what might occur in the absence of an agreement helped move them to agreement. In one set of negotiations with a large non-faculty unit, we advised the union that for auditing purposes we had to have an authority base to legalize expenditures relating to staff in the bargaining unit, and to fill the void of an expiring agreement we were recommending to the board a resolution that directed the president to take whatever actions were necessary to promulgate policies to replace those in the agreement. Settlement followed quickly.

As in so many aspects of bargaining, there is no single action that will always be appropriate at this point. As chief negotiator, you should analyze the options available to you, weighing them with care, and identify the approach that best fits the strategy being pursued in the negotiations.

## Extending the Agreement

If time is pressing and the unresolved issues are fairly narrow, an extension of the agreement may be proposed by either party. This may be helpful, as it can avoid any immediate problems resulting from the expiration of the agreement, but a word of caution is appropriate. As discussed in Chapter 7, some times of the year are preferable to others as an expiration date, and you should not agree to any extension that gives the union a calendar advantage unless you are certain that the alternative of refusing to agree will create even worse difficulties.

## Voluntary Interest Arbitration

A second alternative which may surface is to submit the remaining issues to interest arbitration. This proposal, typically coming from the union, can be seductive; you avoid any possibility of a strike, you end the exhausting process of the negotiations, and you identify a neutral authority to look at the open issues and resolve them in a manner that you hope will be equitable. (Indeed, it may even occur to you in private that if the arbitrator's award is a disaster, you will have a scapegoat to blame for the agreement.) But beware. It is the conventional wisdom of management chief negotiators that one should avoid interest arbitration whenever possible. To agree to it is to hand over a signed blank check to an outsider who is accountable to no one for the implications of the decisions that he or she makes; voluntary interest arbitration is an abdication and evasion of management's obligation to agree only to provisions that will not significantly impair the operation of the university. You may avoid a strike by this process, but you may pay dearly for it in principle and impact.

## Unilateral Implementation of Last Offer

If your agreement expires and you are at impasse, consider implementing your last offer to the union. This involves offering employment contracts, or rates of pay, to the members of the bargaining unit even though you do not have an agreement with the union. The theory behind this tactic is that if your position is reasonable (as defined by members of the bargaining unit), you may bypass the problems of securing agreement with the union by going directly to the work force. There have been occasions when this tactic has worked.

You should approach it with caution. First, it is the ultimate end run by management around the union leadership to the rank and file of the membership. This will be understood instantly by the union's leaders. They will assume that you are deliberately trying to destroy the union as a major force on your campus. They will understand that your effort strikes at the core of their identity, because if you can successfully deal with the members of their bargaining unit without their approval, their reason to exist will be effectively nullified. They will react with immediate outrage and permanent distrust, and you should expect them to oppose you in every way they can.

Unilateral implementation also carries legal risks. Unless it can be clearly determined that "impasse" exists—and this is sometimes very tricky—you are probably vulnerable to an Unfair Labor Practice charge which will allege your failure to bargain in good faith. The rationale here is simply that you should be negotiating a ratifiable agreement with your union leaders, rather than bypassing them to go to their membership. The consequences can be major. Get legal counsel before proceeding.

Nevertheless, the presence of major risk (negotiations *always* bring risk) should not prevent you from evaluating unilateral implementation when it seems a sound tactic. That can occur if you are convinced that the bargaining unit would ratify your offer if it were only given the opportunity by the union. I once encountered that in faculty bargaining, when the sticking point was salaries. I understood from highly confidential sources that there was no question the faculty would ratify the salary proposal we had on the table, but the union would not budge from its demands for more. I hinted broadly at the table that we might implement our offer unilaterally, being careful neither to threaten it nor commit to it for the record. I had the staff write a computer program that produced for each of the 400 continuing faculty in the unit a three-year projection of salary, with increases reported for each year in dollars, percentage, and salary level, followed by a life-of-contract summary. The printouts were impressive as artifacts, and the numbers seemed persuasive to me. When we reached agreement, I offered to give the individualized projections to the chief negotiator, to provide to the faculty as part of the union's recommendation to ratify. He accepted them gladly.

"You may wonder why we prepared these," I said. "No," he said, "I know you were thinking about implementing it if we didn't reach agreement." It was a serendipitous moment. The work in preparing them was not lost, as the union used the projections to assist in a goal we supported—the strong ratification of the agreement. The union understood clearly that we had explored the possibility, that we had the resources to produce the projections, and that we had the courage to take this action if it was concluded to be appropriate. We risked nothing. Explore this option if the circumstances suggest it.

## Analyzing the Union's Positions

Assuming you are not at impasse, and agreement seems near, analyze the union's position once more with care. With the frequent exception of the salary issue, the union's position can usually be defined by management with some precision from one or more of the following sources: the written proposals on the table, the comments (particularly in private) of the chief negotiator, and your surmise of where they will settle. The surmise can be quite accurate, especially when you are working with mature and effective leadership. If they seek the deletion of language that has been included in the agreement for years, you can assume they will not take the matter to confrontation unless it has created major and specific problems for them in the past year or two, problems of which you will have been aware. If they are holding out for some provision that would benefit a very small minority of the unit, you can assume that it will not be a final sticking point. (Remember that the union will have its parallel evaluation about where *you* will settle, and your final position should contain no surprises for them; if you have refused to agree to an agency shop provision in an initial round of bargaining, and it is included in all of your other agreements, the union will have a right to assume that agency shop will emerge as part of its final agreement.)

## The Sidebar

A sidebar is often helpful at this point. Lay out candidly to your counterpart, from the *union* point of view, the outlines of the settlement, exclusive of the salary issues. Remember that the chief negotiator will be on his or her way to a membership meeting to seek support for ratification or to discuss the prospects of a strike. Outline a settlement and go through it in summary as you would imagine it being presented to the membership: what has been achieved, what has been retained, what has been expanded, and how it relates to the initial position of management on the issues, and to other logical points of comparison. Be candid in explaining your evaluation of those issues on which you expect the union to move to your position. ("I simply cannot believe that you will hold up the settlement over a provision that has no advantage to the university as a whole and would benefit fewer than 10 percent of your bargaining unit.")

The exercise is often a useful test of how well—or badly—you have evaluated the situation, and it may provoke a parallel explanation, offered by the union, of its projection of an alternate settlement which should appear to management to be equally reasonable and ratifiable. If this occurs, listen and evaluate with care.

Often the shape of the settlement emerges on all issues except salary, with only a verbal understanding that this will be the agreement if salaries can be settled. If this occurs, the language on non-salary issues should be prepared while you search for the point between your two salary proposals that will be mutually acceptable.

## Getting It in Writing

When it all comes together with the union, get it in writing and get it signed. If the outstanding issues are the numbers defining salary increases, your agreement can be as crude as a handwritten outline on a page from a legal pad or the backside of a paper restaurant place mat, but get it in writing and get it signed. As soon as possible, prepare the final contract language that will contain the salary issues, getting signatures on this as well as the language that will embody the other issues agreed to earlier on a contingency basis.

## Summary

When the outlines of a tentative agreement become clear, evaluate it carefully in the context of established goals and objectives. Consult further with the board if there is any doubt that you have authority to agree or concern that it will be ratified. Look for pressure points to bring the agreement to closure, including those related to time and the expiration of the agreement. If the facts suggest it, consider a unilateral implementation of your last offer to the union. Consider, if necessary, the options of extending the agreement or submitting unresolved issues to third party determination, but understand the pitfalls these actions may entail. Meet privately with the union's chief negotiator in an effort to resolve final differences. Get the terms of the final agreement reduced to writing as soon as possible. Wrap it up.

Thus it should end, with the members of the two bargaining teams enjoying a brief period of relief and euphoria, the long process having worked its way to conclusion, with some measure of success for each party in having achieved certain goals, and a sense of resignation about those ungained—resignation and an awareness that there will be another opportunity down the road to try one more time.

But for now it is over.

## 17

# Ratifying a Tentative Agreement

Once a tentative agreement has been reached, a great deal has to be done in a short period of time, all of it requiring careful attention. Far too much time and effort have been invested by this point to take the slightest chance of having the agreement fail at ratification if you can possibly avoid it. Often the time constraints are severe; in Ohio, for example, the parties are permitted only seven days in which to vote to accept or to reject a recommended final settlement issued by a fact-finder.

## Reporting to the Board

Your first priority, of course, is to prepare a report to the president and the board. In the system of board communication discussed earlier, this report is at Level 4, requiring a narrative introductory explanation of the key points; an outlined summary of the entire agreement, article by article; the text of the agreement, paginated and preceded by a table of contents; and a draft resolution of ratification. Your narrative report should relate the terms of the agreement to the goals and objectives established at the beginning of the negotiations. If you have maintained the "Outline of Issues Tentatively Agreed To," preparation of the final summary will consist merely of adding summaries of the last issues to come off the table. Similarly, the board's task of absorbing all this information quickly will be much easier if board members have been provided periodic progress reports, with summaries of the issues resolved, as negotiations have proceeded.

If negotiations have culminated with the written recommendations of a third party on the issues on which you could not reach agreement, your report will have to be designed accordingly. In situations involving this kind of third party involvement, the potential agreement will typically be a hybrid, combining provisions agreed to by the parties with those externally recommended. Distinguish carefully between the two. A useful separate outline is one that displays the final issues in three columns, displaying management's final position, the union's final position, and the third party's recommended resolution. Distinctions of origin in the text of the agreement itself are also important; I have found color coding helpful, the use of one color of paper for those issues agreed to, another color for those reflecting the third party's recommendations. In addition to the written report, members of the board should be advised that you are available to clarify any details or to provide any additional information that may be desired.

## Union Relations Prior to the Ratification Vote

Stay in close touch with the union leaders during this period. They may need your assistance in some of the logistics of ratification: duplicating and distributing material, reserving rooms for meetings, etc. In addition, they will invariably want to discuss how the administration plans to administer certain new or revised provisions, what the posture will be in certain areas that involve broad management discretion, and how the details of transition from one agreement to another will be implemented. Assuming you are seeking ratification of a negotiated agreement, you should cooperate with the union leaders in every way possible, remembering that a solid ratification vote is as much in your interest as it is in theirs.

A final settlement recommended by a third party presents a different situation. Assuming the board retains the authority to reject the recommended settlement, the board's deliberations as a general rule should not be prejudiced by any public statement or by any communication to the union concerning what course of action is to be recommended by the negotiating team, the chief negotiator, or the president. In the rare situation that calls for advance disclosure to the union of what the administration's recommendation will be, secure board authority before revealing your position. Union leaders are predictably and understandably curious about your position on recommended settlements, and my standard response is, "When the board has taken action, you will see the position I supported from the beginning." If rejection occurs, you need to be able to go back to the table with the same united management team behind you that you have sought to maintain throughout the negotiations. In the period leading to the parties voting on a recommended settlement, you should show the union the same cooperation described in the preceding paragraph, but it should be made clear that this does not imply an endorsement of the recommended settlement.

## Reporting to the Management Team

When agreement is reached, you need also to report quickly to the administrators whose faculty or staff will be governed by the agreement. Get a text of the agreement to them at the earliest possible moment, so they will learn the details from you, rather than from the communications distributed by the union. Provide them also with a summary, and schedule an early meeting to walk them through the details.

## Media Relations at Ratification

If you have reached tentative agreement, a joint press release, issued with the union, is usually in order. The news media will be interested in the details, especially if the bargaining unit is a large one, or if the agreement includes any highly unusual provisions. The risks of the negotiations being impeded by publicity, discussed earlier, will have ceased to be a concern. The joint press release is good union relations as well as good media relations, and presents a unique opportunity to announce with clarity and accuracy the essential details of what has occurred. In addition, the union may wish to hold a joint press conference, and if so you should cooperate fully.

## Reviewing Language at Ratification

A final detailed review of the language of the agreement is required at this point. Invariably, editorial revisions will be required to give the text consistency. It is also a good idea to review the document one last time for clarity. Occasionally you will discover a passage that requires modification to make certain the agreed upon provision is stated in an unequivocal fashion that will defy misunderstanding or misinterpretation. (The continued employment of grievance arbitrators is testimony to the impossibility of attaining perfection in this endeavor.) You will need the union's assistance and concurrence in this process. Either party may be tempted to cross the fine line that separates editorial review from reopening negotiations; this is avoided by the understanding that not a single word is to be changed without mutual agreement. A list of changes agreed to should be distributed to the board prior to its ratification vote. At this point, with luck, everything should be in position for both parties to ratify the agreement.

Following ratification, several final details will require attention. The agreement needs another review, from a prospective viewpoint, to identify the tasks that will have to be performed in the coming weeks, months, and years. These tasks should be listed, identified by date, action required, and person responsible. The list of things to be done (called a "to do list" in my office) should be distributed to the persons involved, with a system put in place to follow through with confirmation of compliance.

## Final Caucus, Review, and Report

A final gathering of the negotiating team is in order, a last caucus. This is a good time to look back over the months of negotiations, to critique the process and identify any elements that could have been managed more effectively, any significant errors that occurred, and any major surprises that emerged. This is also a proper starting point for a reflection on what the negotiations may suggest about problems you can expect to encounter when you return to the table for the next round of bargaining. Issues may have surfaced without having been resolved—or even addressed—in the final agreement, and while they are fresh in your mind they deserve analysis from the perspective of what administrative solutions are possible in the window period before negotiations resume. Other issues may have been resolved only partially, and require similar attention. New contract language may have opened up new opportunities to take actions that will improve your position when you return to the bargaining table to secure a successor agreement.

These deliberations should lead you to a final report to the president, an overview and evaluation of the negotiations, culminating in a summary of what actions may be desirable, immediately or in the months ahead.

## Summary

At the conclusion of negotiations, your first and most important task is to report fully to the president and to the board, giving the board in particular all the information required for an informed vote on ratification. If you are dealing with a third party's recommendation, make certain it is reported clearly in relation to the last positions of the parties at the table, and do not cloud the board's deliberations by prematurely revealing what action the board can be expected to take. Cooperate with the union leaders by assisting them similarly to provide the members of the bargaining unit an opportunity to understand fully the provisions of the proposed settlement. Report as quickly as possible to administrators whose faculty or staff will be covered by the agreement. Prepare a press release announcing the details of the outcome of negotiations, jointly with the union if the union so desires. Review the text of the agreement with the union, seeking editorial consistency and clarity. Hold one last caucus with your negotiating team, devoting time to a retrospective review and critique of the negotiations: what went well, what failed, what could have been done better. Consider also what needs to be done to implement the agreement, and to initiate activities relating to the next round of negotiations. Write your final report to the president.

Finally, at this point you will be long overdue for a vacation. Physical fatigue is standard, frayed nerves common. The euphoria of reaching agreement is brief and fleeting, often yielding quickly to a state of mind similar to moderate postpartum depression. In part this is because fruition is seldom as sweet as its anticipation. In part it is because most agreements are at best uneasy and imperfect compromises that fail to satisfy either party fully. In part it is because very few people will understand in any detail the difficulties you will have encountered or the goals you will have accomplished. In part your mindset will reflect the reactions of others to the agreement; administrators who have never sat at a bargaining table and have not the faintest appreciation of the magnitude or complexity of negotiations will nevertheless feel free to criticize in detail your perceived failures and the organizational disaster you have wrought. At this point, you may share a special empathy with the union's chief negotiator, who often endures these reactions in a highly parallel fashion, and a final post-agreement sidebar in a local watering hole may be a good ideal.

Then get out of town. A few days on a quiet beach can do wonders.

# 18
# Living with the Union

Ratification of an agreement is never the end of labor relations, and in some ways it is only the beginning. In the longer term, a given set of negotiations is not an isolated event, but rather one more chapter in the record of the university's efforts to survive and flourish in an environment quite different from that of a campus with an unorganized work force. Implementing a ratified agreement will require immediate and continuing efforts to insure that it will work smoothly, and in the process you will continually encounter challenges, problems, and opportunities.

(At many universities, responsibility for contract administration is assigned to someone other than the individual who negotiated the agreement. This may be a wise decision, because different skills are required. For purposes of this manual, however, I assume that the chief negotiator will have the responsibility for administering the agreement.)

## Training Sessions for Management

You should move quickly to organize and conduct training sessions for members of the management team who have supervisory responsibilities for the members of the bargaining unit. The extent of training required immediately following ratification will be defined largely by the degree to which the agreement will modify the working relationships between members of the bargaining unit and their department heads and supervisors. The size and complexity of the bargaining unit will also be a major factor in determining the extent and nature of management training needs. The most important element in determining training needs will be the details of the agreement. In general, first agreements will require more attention than their successors.

Structure training sessions carefully. While it is useful to provide your management staff immediately with both a summary and the full text of the agreement, do not spend a great deal of time on those provisions which will not relate to their daily lives. The separability provision and the zipper clause may be of great importance to the university, but they will seldom have any immediate relevance to a department head.

Concentrate instead on those provisions which relate to management's obligations and rights in supervising the performance of members of the bargaining unit. Be certain your management staff understand what they may do, must do, and cannot do. Provide them with specific illustrations and handouts to guide them in their supervisory activities. Try to develop an awareness that while the university has ratified a labor agreement and intends to comply fastidiously with its provisions, department heads and supervisors should be neither apprehensive about nor intimidated by the union contract.

The amount of time devoted to training sessions will typically diminish as relations with the union, and experience with the agreement, mature over a period of years. But the need to provide an adequate level of training for management never ends.

## Staff Support for Management

Formal training sessions should be buttressed by staff support in management/labor relations, a combination of formal and informal efforts to assist department heads in understanding the application of the labor agreement to the daily requirements of their positions. This may be a more important management function than the training sessions, which by nature tend to be general.

Contract compliance manuals can be effective tools. Some universities prepare handbooks that reprint or summarize the agreement, each article accompanied by an explanation of its significance and advice to department heads on the implications for day-to-day management activities. Such manuals can be extremely useful, if you can keep them current, and if you can be certain that department heads read them and use them regularly as reference tools.

On my campus we have handled this function more informally but with some success. Each fall my staff prepares an annual calendar of "deadlines and due dates" for faculty personnel activities, each entry listing the date, the activity that is to occur, the individuals responsible for the activity, and the section of the faculty agreement that governs the activity. In addition, I update a "Chairperson's Check-Off Sheet" for each of several major faculty activities, such as tenure review, performance evaluation, and review of candidates for promotion. Each summary sheet details precisely what the chair is to do and when it must be done; each notes common pitfalls to avoid. When appropriate, additional materials are appended to the check-off sheet (forms, stock memoranda, etc.).

This package of materials is distributed to deans and chairs at the beginning of fall term, and I attend the year's first meeting of this group to review the material, point out any changes from the previous year, and answer questions. (I meet earlier and separately with newly designated chairs, to review the material in greater detail and to orient them to the aspects of the chairperson's role that will be directly influenced by the agreement.)

It is also critically important that deans, chairs, and department heads have routine and immediate access to an authoritative interpretation of any provision of the agreement that poses an operational problem. Invariably, questions will arise that have not been anticipated in your general efforts to educate management concerning the provisions of the agreement. Be certain such counsel is always immediately available to the people who need it.

## Staffing Grievances

Particular attention must be paid to assisting management in responding to grievances; this should include direct assistance from the central administration. Members of the bargaining unit may use the grievance procedure as a preliminary coercive gesture, believing that the threat of filing a grievance will secure a favorable response from a department head who will not want his or her actions or decisions scrutinized by his or her administrative superiors. Unfortunately, this tactic sometimes works. You need to work diligently to assure management that the filing of a grievance *per se* is no indictment of a department head's performance, and indeed may point to necessary decisions having been made. Your department heads need to understand that just as the union serves to represent and support the grievant, the university has a parallel support system for its representatives whose actions are challenged.

On my campus we maintain central control over grievance flow by requiring that a control number be secured from my office at the time the grievance is filed. We immediately investigate the background, and we coordinate the scheduling of all grievance hearings. My assistant or I attend all grievance hearings, to provide staff support to the administrator who is hearing officer, and we draft or review all grievance dispositions before they are issued. The goals are to be certain that the department head or chair understands that he or she is not confronting the union alone, and to assure consistency in the administrative application of the terms of the agreement.

(This degree of central involvement in grievance administration is not as herculean a task as it may appear. Mature union relations should produce clearer contract language and fewer disputes as to its meaning. With over 1,000 faculty and staff in four bargaining units, our total grievance flow is typically 15–20 each year.)

In this area, as in most elements of labor/management relations, there is no single approach that is "right" for all universities, but in general you will certainly need a carefully structured procedure for hearing and adjusting grievances in a timely manner.

## Adapting Academic Administration

The advent of collective bargaining for faculty will require the activities and support services previously described, but it will also require far more substantive actions if the university is to function successfully in the new environment of faculty unionization.

The academic administration, including the president, should quickly assess the immediate changes that will be mandated by the faculty agreement, and examine as well the broader actions that will be necessary to adapt to the unionized environment.

Deans and chairpersons require special consultation and consideration. They may well feel apprehensive about their ability to function under the new order, perhaps having heard the cliché that deans and chairs are the primary losers in the redistribution of power that emerges from faculty bargaining. Typically they will have less flexibility than previously, and fewer of their decisions and recommendations may be confidential. The negotiated grievance procedure may assure faculty the opportunity to have more decisions made by deans and chairs screened more closely at the provostal level than was true under the appeals procedures available prior to bargaining.

Deans and chairs react in very different ways to the initial faculty agreement. Those who fare best, in my experience, are those who have no strong preconceived biases on the issue of faculty unionization. These individuals accept the agreement as an ordering of relationships between academic professionals in a new pattern, realizing that numerous patterns exist, none perfect. Deans and chairs who succeed in the presence of a faculty agreement understand that acknowledged leadership is always earned through performance rather than conferred by title; that all intelligent decisions are preceded by reflection and consultation with the appropriate people; that it is always better to persuade than to direct.

This, in outline, is the model of academic leadership that should be encouraged and articulated, embodied in action and in utterance, from the president throughout the academic administration. Work diligently to help your academic administrators understand that the broader function and mission of the university remain unchanged, and assist them in adapting to the new structure. Most will make the transition with little difficulty if they are given proper guidance and assistance.

A few deans and chairs will have greater difficulties. They may persist in the adamantine position that faculty unionization is unacceptably "unprofessional" and detrimental to the university. I suspect it is not uncommon that administrators who persist in this viewpoint are often those whose administrative style and decisions fueled the initial drive to unionize, and that subconsciously they utilize the union as a scapegoat to account for their administrative shortcomings. If their opposition to unionization influences their performance to the point of damaging the administration, they may decide to leave their positions—or they may have to be removed.

## Building Union Relations

Activities to strengthen relations between the university and the faculty and the union leadership should resume (or commence, or continue) immediately following ratification of the agreement. If the organizational drive or the negotiations brought moments of antagonism or hostility, put them behind you, and try to resolve any lingering animosities on either side. Harboring resentments is of no value, and much can be gained by cultivating good union relationships.

During the negotiations, the president and the provost typically will have avoided detailed discussions with union leaders (certainly on issues being negotiated), but out of the bargaining season restrictions should be lifted or minimized. Periodic informal meetings can be helpful in gaining a better mutual understanding of the parties' viewpoints. The president and the provost will routinely have public opportunities to acknowledge contributions made by the faculty, its union, and its leaders, and this should always be done. The union can provide valuable support in various activities (e.g., United Way solicitations), and you should make a point of expressing your appreciation.

Conversely, you may be approached openly or privately by individuals engaging in or anticipating anti-union activity, hoping to find management support based upon a private bias against unionization. Always avoid such entanglements. (They are not only unwise, they are often illegal.)

You may find far larger opportunities to pursue your common interests with the faculty union. Public universities funded by legislative appropriations often need every available avenue to communicate their needs for fiscal support; in addition to legislative liaison efforts, the faculty union and its affiliates may be of significant help. On my campus some years ago we faced a state referendum that would have reduced tax revenues, and therefore funding for the university. Actions by both the university and the faculty union contributed to the defeat of the referendum.

Union relations should be cultivated carefully and continually. This does not mean there will not be disagreements, and there will be limitations. For example, you should be careful that ongoing consultation with the union leadership does not erode the delineation of authority in the agreement; do not through careless practice give away that which you worked so diligently to protect in bargaining. Nevertheless, much can be accomplished through the development of strong relations with your union leadership, relations based upon mutual respect and a core of common interest.

An adage sometimes voiced by cynical chief negotiators holds that management gets only the unions it deserves—i.e., that the vote to unionize is in itself an indictment of inept management. However accurate that suggestion, I suspect that the quality of union leadership that is found ten years later will always reflect to some degree the efforts of management to build a strong, mutually beneficial relationship. Work at it.

## Building Broader Faculty Relations

However important the faculty union, it is not *the* faculty, but merely its exclusive bargaining agent for negotiating salaries, workload, and terms and conditions of employment. An enlightened administration never loses sight of that distinction, and never ceases its efforts to build better faculty relations across a broad range of activities.

The faculty remain the foundation of the university, and in the environment of bargaining, this is occasionally forgotten or misunderstood. A popular cliché of recent years, born of student activism from the 1960s, and the new emphasis on the service-based economy, holds that "Universities are here to serve the students." One cannot disagree with such a truism, but as a definitive statement it is woefully inadequate. Purveyors of hamburgers, used-car dealers, and rock music performers are also "here to serve the students." What makes the university different, uniquely different, is educational access to the knowledge and expertise of our faculties. Ultimately, that is all we have to offer to our students that is of permanent and unique value.

You should be continually engaged in various activities beyond the scope of negotiations to develop and enrich faculty life as an investment in the university. The efforts of my institution are perhaps typical of faculty support activities that can and should proceed outside the scope of bargaining. Our senate continues to function as a collegial body with responsibility for curricular and academic policy matters. Graduate faculty play a similar role in matters pertaining to graduate programs, including the administration of funds allocated to support faculty research. We have aggressively pursued capital funding to build and renovate faculty offices, laboratories, and classrooms, and to construct a large new computing facility. We have found extra funding for library acquisitions, and established a program to fund the replacement of instructional equipment on a regular cycle. New faculty are given financial assistance for relocation, and provided with a detailed orientation program upon their arrival on campus. Each spring we hold awards dinners to honor faculty and staff who are retiring, who are reaching milestones of university service, and whose past service to the university has been particularly outstanding. Our provost regularly reports to the board on the major accomplishments of our faculty, and our news service pumps out an unending flow of press releases concerning faculty publications and research activities. We routinely reach out to large numbers of our faculty, formally and informally, to seek their consultation and assistance on a wide range of issues.

This list could be continued, but perhaps it suggests the types of activities that should continue if your faculty is unionized. You should do these things simply because it is in your institution's self-interest to do so. Faculty unionization does not alter the university's goal of recruiting and retaining the finest faculty it can attract, as the cornerstone of its academic endeavor.

## The Benefits of Collective Bargaining

Although administrators typically spend more time complaining about union agreements than praising them, collective bargaining offers certain opportunities and benefits to management.

Collective bargaining tends to centralize authority on negotiated issues. The legal obligations, reinforced by the grievance procedure, require—and guarantee the acceptance of—central control over various matters that previously may have been delegated further down the organizational chart than they should have been. With centralized control you may be able to achieve greater consistency in administration, as well as other benefits that derive from tighter control.

Multi-year agreements simplify intermediate-range financial planning. With an agreement ratified, you can project with much greater certainty what your personnel costs will be during its term.

Management rights are clearly delineated when an agreement is in place. Those rights may be diminished, relative to the ideal, as defined by some administrators, but at least there is a clear contractual definition of the rights and responsibilities of various constituencies within the university community. This can be a pleasing contrast to the environment of some universities, where "faculty consultation" is ill-defined and can appear to be inconclusive as well as interminable.

Negotiated provisions may find far greater acceptance among faculty or staff in the bargaining unit than decisions reached unilaterally, regardless of the extent of consultation preceding them. Individuals have difficulty objecting to provisions democratically ratified by their peers. A veteran leader of the faculty union on my campus once complained to me that without compensation he had relieved the administration of the burden of dealing with individual complaints about salaries; now, he said, all the unhappy faculty came to him instead. He was right; salary complaints to the university virtually disappeared in the years following faculty unionization.

Finally, major decisions involving faculty personnel issues can be evaluated more evenly and made more quickly in the context of collective bargaining than on a campus where the collegial mode of governance prevails. In the absence of a unionized faculty, sensitive personnel matters are often examined in isolation, out of the broader context of overall personnel costs, and may be subject to tremendous political pressure. Collective bargaining brings all these issues to the table at one time in one context, and may provide management with significant opportunities otherwise unavailable. This works negatively as well as positively. Once the agreement is in place, management has no obligation to examine additional faculty benefits until the next round of negotiations; while an agreement requires you to provide specified benefits, it simultaneously protects you against proposals for additional benefits during its term.

Collective bargaining can offer a variety of opportunities to management. They should be explored carefully and seized when appropriate.

## Living with the Union

I began this manual with a discussion of the three options available to management when the organizational drive gets under way: to oppose the union, to facilitate its efforts, to remain neutral. With the ratification of an agreement, your options are reduced to two. You can conclude that unionization has become a fact of institutional life, and accept it, understanding the restrictions it imposes and the opportunities it provides, and proceed with the primary goal of operating a university. It should be obvious to any reader who has stayed with me to this point that this is the approach I endorse.

You may, however, persist in your opposition to the union. Some universities do not yield, steadfastly opposing the union at every opportunity. No doubt there may be contexts in which this is appropriate, but efforts of this nature can be counterproductive.

I once attended a conference of management negotiators where two men appeared seeking help with an unusual problem. They were officers at a college where the faculty had sought to organize. They had opposed the union in a variety of ways, which they recounted with some pride. Most notably, they had fired the leader of the movement (and gotten away with it) and had made life sufficiently miserable for several other leaders that they had resigned. The drive to unionize had collapsed. The integrity of the college was thus preserved, they reported, but other problems had since emerged. Bright young faculty apparently uninvolved in the union movement had resigned; senior faculty, friends of decades, were consciously avoiding members of the central administration. Morale was awful, and a sense of malaise prevailed. What should be done now?

A friend of mine who is a veteran chief negotiator with faculty observed later: "They have killed the songbird, and now they are unhappy with the silence."

## Summary

The advent of collective bargaining, culminating in a negotiated agreement, should prompt a number of administrative actions, some immediate and specific, others more permanent and general. You should immediately establish training sessions to prepare your management team for the new world of living with the collective bargaining agreement. Prepare them carefully and develop support systems to assist them in coping successfully with the new order. Pay particular attention to the grievance procedure, being certain that your management representatives are fully supported in disputes growing out of the agreement. Work diligently to establish or maintain solid relations with the union, especially in those areas in which you share common cause. Continue to build faculty relations in areas outside the scope of negotiations, remembering that a strong and effective faculty is the institution's most valuable asset. Understand and explore the unique management opportunities that collective bargaining may offer, and exploit them.

Finally, make your own personal peace, if necessary, with the fact that you must now deal with a unionized faculty or staff. There are far worse fates. The world is pluralistic, and education has been organized in many different patterns over several millennia, from the slaves who tutored pupils in ancient Greece to the rich diversity that marks higher education in America today. There are many variations on the structure of relationships that can work successfully in the university setting. It is quite possible to live with collective bargaining while fulfilling your primary obligations.

# Conclusion
# Keeping Your Eye on the *Right* Ball

The role of management's chief negotiator, as outlined in this manual, can be difficult, complex, and trying. Of the many specific tasks and skills required, few are challenging in themselves, but weaving them all together in an operation that moves forward smoothly to completion can be exceedingly difficult. Primarily this is because many individuals and entities are involved, each with a different interest in the negotiations, each with a different role to play, and each with different needs to be met. Management's chief negotiator tends to become the focal point of those needs, seeking to serve them to the extent feasible. The chief negotiator's classic image is that of an advocate sitting at the bargaining table, seeking to persuade his or her counterpart to reach agreement on the issue at hand. But the time spent at the table may represent as little as one-tenth of the total required of the chief negotiator, the rest being devoted to a multitude of tasks performed largely behind the scenes, preparing for the drama (such as it may be) of the negotiations. The chief negotiator plays many roles, each requiring a different set of skills and talents.

The chief negotiator begins as a policy researcher and analyst, examining the history of the current agreement, or in the alternative, the matrix of personnel policies that have previously governed the careers of staff members who have now opted for collective bargaining. All of this information will require careful study; it must be analyzed in the context of prospective bargaining, and summarized in a manner that permits the president and the board to understand the situation quickly and fully. This study will lead initially to a recommended course of action that will fulfill the obligation to negotiate while retaining a proper measure of authority to manage the institution. During the term of the negotiations, the chief negotiator will continually update the information base, as well as develop recommended actions to address new developments. In these tasks, as in all other aspects of the negotiations, the chief negotiator will need the help of support staff with expertise in various areas.

A second key role for the chief negotiator is that of political advisor to the president. Collective bargaining agreements are ultimately political treatises, negotiated by designated representatives and democratically ratified by the constituencies of the board and the bargaining unit membership. "Political" is sometimes considered a dirty word, implying base or dishonorable motivations or activities, but the term should not carry this connotation. Most issues in institutional life are "political," in the sense that a critical dimension of any proposed action is its potential for acceptance or rejection by the persons who will be affected. Issues that emerge in bargaining will have significance on at least two levels—the "objective" reality of the issue, and the subjective perception of it by the constituencies involved. The president is entitled to a full understanding of each issue on both levels, and it falls to the chief negotiator to assist in any manner that will provide that understanding.

Advocacy is perhaps the chief negotiator's major role, at least as usually perceived. You go with your negotiating team to a private room with a large table, to meet with your counterparts and to exchange reams of paper that contain proposals and related documentation. You discuss, debate, explain, question, persuade, elucidate, cajole, promise, threaten, flatter, plead, bargain, and engage in related activities, until eventually with luck you reach a tentative agreement on the issues being discussed. (This may take a while.)

Beyond analysis, research, strategy development, presidential advisement, and advocacy, the chief negotiator coordinates the activities of others who play various management roles in the negotiations. This includes running a complex communications network which provides information to numerous individuals and entities involved in the negotiations, in each instance tailored to some extent to the needs of the audience. As the roles of each differ in the negotiations process, so does the obligation of the chief negotiator to communicate accordingly. Thus the chief negotiator presents the same information, with different levels of completeness and with different motivation, to the president, the provost, the board, the negotiating team, the union, the general administration, the third party, and the press. With each group, the chief negotiator seeks both to share information and to advocate a set of conclusions based upon that information. This requires constant improvisation as shifts in audience require adaptation of communication tactics.

From the obligation to serve each of these constituencies in one fashion or another evolves some degree of functional accountability, and with it potential vulnerability.

The preparations for negotiations include the delineation of responsibilities of the various players in this production, as well as a modified organization chart which depicts the possibilities of the end run; both display the chief negotiator in the traditional hierarchical and vertical relationship to the president, and through him or her to the board. Before the negotiations are completed, the chief negotiator may sense that a more accurate display would be circular, reflecting the negotiator relating directly to the constituencies of the president, the board, the provost, the deans and chairs, the union, the third party, and occasionally the press. Administratively the chief negotiator may report only to the president, but other entities will have expectations related to the chief negotiator's performance, and each, under extreme circumstances, can facilitate the successful performance of the chief negotiator—or make it impossible to achieve.

If these are the difficulties and the challenges of the role of the chief negotiator, the key to performing it successfully is to work diligently and tirelessly, taking nothing for granted, planning as much detail as possible even as you realize that detailed anticipation of events will never be complete. Bear in mind the importance of labor relations to the university's well-being, and the resulting necessity that negotiations be taken seriously and executed carefully. Always do as much as you can as early as you can. Remember that negotiations often lead to sudden crises, when complex responses to critical situations may have to be made literally overnight; do not assume you will have the luxury of several weeks or even days to prepare for such eventualities. Do everything you can to be ready for any development that may occur at any moment in the negotiations. Remember that there is always some element of risk in any set of negotiations until you have a ratified agreement.

Once I sat in the office of my president, giving him a quick summary of developments at the bargaining table with the faculty; there was little to report that day, except that we seemed to be momentarily at loggerheads, unable to break a deadlock. He listened patiently, and said, "Well, keep your eye on the ball and let's see where it goes from here."

That, I thought in retrospect, is always good advice for a baseball player, but the problem in negotiations is that usually there is not one ball to watch, but many, each the object of your attention from time to time. The true challenge is to keep your eye on the *right* ball.

Do not seek to impose upon faculty negotiations your personal vision of the contract language that will serve the faculty's best interests. They have designated an exclusive representative to perform that function, and your only goal is to secure an acceptable agreement with the union that can be ratified by both the faculty and the board. Do not be foolish enough to talk to representatives of the news media in order to cultivate publicity you hope will show you in a good light. Negotiate an agreement. Do not use the negotiations process to settle old grudges against members of the union leadership. Get an agreement. Do not be perturbed when the union negotiator questions the legitimacy of your birth or the adequacy of your intelligence. Get an agreement. Remember to whom you are accountable, and do not be deluded that you can or must negotiate an agreement acceptable to everyone on campus. Stay close to your president and your board, and get an agreement they will ratify. Do not assume that a record of success will give you authority to make commitments without having secured clearance in advance. Get an agreement that will be ratified.

This view of the chief negotiator's role does not mean that you should permit the union to define the scope of bargaining or control the negotiations. It does not mean that you should capitulate to unreasonable proposals, rush to agreement to meet arbitrary deadlines, or react timidly to union efforts to undermine the authority properly reserved to the university. Nor does it mean that you should surrender to the union all concerns for your faculty or all efforts to build and maintain an academic environment of high quality.

Nevertheless, you should be continually aware of the distractions that can divert a chief negotiator's attention from his or her primary goal. Those distractions may be numerous, and occasionally tempting, but do not be dissuaded.

Identify all the balls in your field of vision, and keep your eye on the right one.

Get an agreement.

# Appendix A
# Suggestions for Further Reading

The literature devoted to collective bargaining in general is voluminous, and that which addresses faculty unionization in higher education since the 1960s is extensive and expanding. The range of material is enormous, from traditional scholarly treatises to quantification approaches now in vogue among social scientists to the practical handbooks written to assist staff in the routine tasks of daily personnel administration. The quality of all this work is predictably uneven.

I have never undertaken a detailed study of the literature of collective bargaining; this appendix intends only to offer elementary suggestions to a new negotiator about where to begin a search for additional information.

In general, *The Chronicle of Higher Education* does a good job of providing journalistic coverage of major developments in collective bargaining in higher education. The *Chronicle* routinely covers elections, certifications, decertifications, strikes, relevant legislation, and major court and labor board decisions. It also reports on some of the more interesting examples of personnel litigation involving faculty and administrative staff, often related in some fashion to collective bargaining. (Address: 1255 Twenty-Third Street, N.W., Washington, D.C. 20037.)

A good overview of American labor law is John J. Kenny's *Primer of Labor Relations*, 23rd Edition (Washington, D.C.: The Bureau of National Affairs, Inc., 1986). Kenny provides a succinct review of the Wagner Act (NLRA) and its amendments, and a good general description of how the collective bargaining process works.

The best source of published information related to faculty unionization is the National Center for the Study of Collective Bargaining in Higher Education and the Professions, affiliated with Baruch College in New York City. The Center publishes a newsletter several times a year, and annually issues a detailed report and analysis of faculty union activities nationwide during the preceding year: organizational drives, elections, certifications, decertifications, strikes, legislation, and major court decisions. The Center also publishes an annual bibliography of material published on collective bargaining with faculty. It also issues annually a directory of collective bargaining agents currently certified to represent faculty in higher education, including information on the nature of the institution, the size and composition of the bargaining unit, the bargaining agent, the date of initial recognition, and the expiration date of the current agreement. The published *Proceedings* of the Center's annual conference, held in April or May in New York, includes the writings of the most successful practitioners and the major scholars in the field, including representatives of labor and management, as well as neutrals and scholars. The Center provides other publications and services. Membership dues are reasonable. (Address: National Center for the Study of Collective Bargaining in Higher Education and the Professions, CUNY, 17 Lexington Avenue, Box 322, New York, NY 10010.)

The Academic Collective Bargaining Information Service (ACBIS) seeks to serve as a neutral clearing house of information related to collective bargaining in higher education. It issues several fact sheets each year, generally analyzing in detail major court decisions that are of major impact on collective bargaining. (Address: ACBIS, Labor Studies Center, University of the District of Columbia, 1321 H Street, N.W., Suite 212B, Washington, D.C. 20005.)

Two collections of essays offer invaluable insights from a number of successful professionals in the field of faculty negotiations. Daniel J. Julius, ed., *Collective Bargaining in Higher Education: The State of the Art* (Washington, D.C.: College and University Personnel Association, 1984), includes 21 essays covering various aspects of collective bargaining, from the broad impact of bargaining upon university life to the negotiations process to contract administration. Many of the essays have a strong practical bent which will make them particularly useful to the novice in the field; the broader reflections on experiences in three states are informative.

The Julius volume builds on an earlier, but still useful work: George W. Angell and Edward P. Kelley, Jr. and Associates, *Handbook of Faculty Bargaining* (San Francisco, CA: Jossey-Bass Publishers, 1977). The *Handbook* brings together essays by an impressive group of experts who discuss various elements of managing the collective bargaining process on behalf of the employer.

Many organizations publish material related to collective bargaining. The Bureau of National Affairs (BNA) offers numerous manuals and periodic reports designed to keep practitioners and scholars current. BNA's Government Employee Relations Report (GERR) is standard, as are its reports on labor arbitration awards. These are available in the periodical collections of most good libraries. (Address: Bureau of National Affairs, Inc., 1231 25th Street, N.W., Washington, D.C. 20037.)

The College and University Personnel Association (CUPA) offers a variety of publications concentrating on personnel administration and labor relations in higher education. These include books, monographs, manuals, and periodicals. While CUPA's primary thrust is toward non-instructional staff, some material deals with faculty matters. In addition to its publications, CUPA and its state affiliates offer a range of conferences and workshops which provide training opportunities and access to the network of labor relations professionals. (Address: College and University Personnel Association, 1233 20th St. NW, Suite 503, Washington, D.C. 20036-1250.)

The National Public Employer Labor Relations Association (NPELRA) and its state and regional affiliates publish a variety of materials related to public sector employment. Some is relevant to higher education, although faculty receive scant attention. A handbook that may be helpful in strike contingency planning is *Maintaining Public Services: The NPELRA Strike Planning Manual*, second edition (Fort Washington, PA: Labor Relations Press, 1984). For information concerning other publications and services, the address is NPELRA, 1620 Eye Street, N.W., Fourth Floor, Washington, D.C. 20006.

On issues dealing with arbitration, the standard work is Frank Elkouri and Edna Asper Elkouri, *How Arbitration Works*, fourth edition (Washington, D.C.: BNA, Inc., 1985). Elkouri and Elkouri is considered the bible on arbitration issues, and is absolutely essential as a reference tool.

Of the various aspects of salary issues, merit pay is routinely the most complex and controversial. An excellent study of merit pay as it relates to public education in America is Richard Murnane and David Cohen, "PLUS ONE: Merit Pay and the Evaluation Problem: Why Most Merit Plans Fail and a Few Survive" (*Harvard Educational Review*, Vol. 56, No. 1, February, 1986, p. 1–17). Murnane and Cohen offer an interesting historical overview of the evolution away from merit pay for teachers in public schools, and an intelligent discussion of the difficult questions which must be asked if you are advocating or defending the concept of merit pay for a class of employees who perform essentially the same duties.

If you are involved in the writing of contract proposals in bargaining, a good dictionary and a thesaurus are necessary tools. Two other handbooks that may be helpful are H. W. Fowler, *A Dictionary of Modern English Usage*, second edition, revised by Sir Ernest Gowers (New York: Oxford University Press, 1985) and Wilson Follett, *Modern American Usage: A Guide*, edited and completed by Jacques Barzun *et al* (New York: Hill & Wang, 1966). Of the two, Fowler is more conservative, British, and prescriptive. Both take the traditional approach that there is typically a "right" way to shape a given statement.

Finally, depending upon the jurisdiction in which you are working, there will be reporting services and labor reporters published to keep labor relations staff current in the ongoing activities of the labor board, the legislature, and the courts. You will have to become familiar with the resources that are available to you. Start with your government documents librarian or the law library of your local bar association.

# Appendix B
# A Glossary of Terms

The precise usage of a number of the terms below varies significantly from one jurisdiction to another. In Ohio's public sector, for example, the agency fee is the "Fair Share Fee," "Fact-Finders" are advisory arbitrators, and "conciliators" engage in binding interest arbitration in negotiations involving police and safety forces. An individual engaging in collective bargaining for the first time is well advised to be certain he or she understands the precise vocabulary of the jurisdiction within which he or she is negotiating.

**Agency Fee**—a fee that bargaining unit members who choose not to join the union are required to pay to the union in consideration of the services provided by the union in contract negotiation and administration. The agency fee is generally permissively negotiable, except in certain states where it is illegal. An "agency shop" is an employment situation in which all employees in the bargaining unit must, as a condition of employment, either join the union or pay the agency fee. The permissible amount and uses of agency fees have been the subject of extensive litigation in recent years, brought by non-union members who have argued that the agency fee provision illegally requires them to support activities and political actions they consider inappropriate.

**Agreement**—1. a collective bargaining agreement, or contract, defining wages, hours, and conditions of employment for the members of the bargaining unit for a specified period of time. 2. concurrence between the parties on a concept, or a provision, or a complete collective bargaining agreement. See *Tentative Agreement.*

**Arbitrator**—a neutral third party whose role is to determine facts, hear arguments, and identify a resolution of a dispute. When the term is used without qualification, the arbitrator's determination is typically binding upon the parties. If the determination is not binding, the process is called "advisory arbitration." "Grievance arbitration" relates to disputes about contract language during term of an agreement; "interest arbitration" relates to disputes that grow out of the negotiations process. See *Fact-Finder, Mediator.*

**Award**—the determination of an arbitrator, typically issued in writing following his or her review of facts and arguments.

**Bargaining Table**—1. literally, the table at which the parties sit during negotiating sessions. 2. figuratively, the entire negotiating process, including its ancillary activities. ("We've been at the table since January.")

**Bargaining Unit**—a group of positions (and the individuals employed in them) which have been determined to be an appropriate entity for purposes of representation in collective bargaining. See *Bargaining Unit Member, Unit Determination.*

**Bargaining Unit Member**—an employee serving in a position or a job classification that has been included in a bargaining unit. This term is often confused with "union member." The individual seldom has a choice about being a member of the bargaining unit, but generally retains the right to decide whether or not to join the union. See *Agency Fee, Bargaining Unit.*

**Caucus**—a break during a negotiating session, when the representatives of one party retire to a separate room, to permit each party the opportunity to hold a private discussion of the issues under consideration.

**Certification**—legal designation of a union as the exclusive representative of a defined bargaining unit for purposes of collective bargaining.

**Chief Negotiator**—the primary spokesperson for each of the parties during the negotiating sessions.

**Collective Bargaining**—the process whereby representatives of a recognized union meet with representatives of the employer to negotiate wages, hours, and conditions of employment on behalf of the members of the bargaining unit, who are represented collectively by the union.

**Contract Bar**—a provision in law or in an agreement which prevents one union from becoming the representative of a bargaining unit already represented by another union; the contract bar is typically in effect for a specified period of time, usually the term of a ratified agreement.

**Decertification**—the collective decision by members of a bargaining unit to terminate the representation status of the union representing them. This typically results from an election conducted by the labor board, in which a majority vote for representation by another union or for no representation. It may also occur as a result of the bargaining unit permitting an agreement to expire and failing—or refusing—to ratify a successor agreement.

**Dues Check-Off**—a provision that requires the employer to collect union dues by payroll deduction. Also called "Dues Deduction."

**End Run**—the tactic of bypassing the opposing chief negotiator and negotiating team by going directly to the constituency of the other party in an effort to influence the negotiations.

**Fact-Finder**—a neutral third party whose role is to examine the record of negotiations, to make determinations concerning facts, and sometimes to make recommendations concerning a settlement of the dispute. See *Arbitrator*, *Mediator*.

**Grievance Procedure**—a provision that establishes a mechanism for dealing with complaints or disputes concerning compliance with the terms and provisions of the agreement. Typically, a grievance procedure includes several steps, all but the first involving an opportunity to appeal a determination made at a lower level, and culminating in arbitration. Precise timelines usually define the filing of a grievance, the holding of hearings, the issuance of dispositions, and reactions to them by the grievant.

**Hired Gun**—a professional negotiator brought in from outside the organization to represent management. Also called a "Gun."

**Impasse**—a deadlock in negotiations, a situation in which neither party is willing to modify its positions on the unresolved issues.

**Intervenor**—a union which "intervenes" in an effort by another union to organize a group of employees for purposes of collective bargaining. The intervenor must demonstrate a minimum level of support (usually 10 percent) among the membership of the proposed bargaining unit in order to secure official status as a challenger.

**Labor Board**—the board created to administer and interpret the labor relations code. State labor boards governing public sector labor relations are usually patterned after the National Labor Relations Board (NLRB), which serves this function for private sector employers under the jurisdiction of the federal National Labor Relations Act (NLRA). Administrative functions include determining appropriate bargaining units, conducting elections, certifying unions, and maintaining various records related to labor relations. Quasi-judicial functions include settling disputes involving Unfair Labor Practice charges and establishing details of interpretation and application of the language of the collective bargaining statute.

**Language**—sometimes used to describe broadly all issues that have no direct economic impact. ("I think we could settle on the money if we could reach agreement on the language issues.")

**Last and Final Offer**—one party's final proposal or position prior to impasse, arbitration, or a strike.

**Linked Offer**—a proposal offered conditionally by one party to another, contingent upon the other party agreeing simultaneously to one or more other proposals. See *Package*.

**Lockout**—See *No Strike/No Lockout*.

**Maintenance of Membership**—a provision that requires all members of the bargaining unit who are members of the union to retain their union membership for the term of the agreement.

**Maintenance of Standards**—See *Past Practice*.

**Maintenance of the Unit**—a provision that requires the employer to maintain a specified number of employees in the bargaining unit, regardless of attrition, changes in operations, etc.

**Mediator**—a neutral third party who enters negotiations in an effort to persuade the parties to reach an agreement that is mutually acceptable and ratifiable. Typically this effort involves pushing each party toward a middle ground of compromise. See *Arbitrator, Fact-Finder*.

**Members Only Unit**—a bargaining unit comprised of those individuals within a given set of job classifications or positions who have individually decided to join the union and be covered by the agreement. This is sometimes used as an approach that permits employees to be represented by a union if they so choose, but requires no individual to become involved. It can produce the interesting situation of four staff members working side by side in the same office and performing the same duties, two of them covered by the union agreement, two unrepresented.

**Memorandum of Understanding**—a document recording an agreement between the parties, generally less formal and less enforceable than a ratified collective bargaining agreement.

**Movement**—a proposal by one party that is closer to the position of the other party than the position previously held. "Room to move" describes the ability to move further (by an unspecified amount or degree) toward the position sought by the other party.

**Multi-Unit Bargaining**—the process of the employer negotiating simultaneously with representatives of two or more separate bargaining units on issues to be settled on terms uniformly applicable to members of all the bargaining units involved.

**Negotiating Team**—the individuals who represent the viewpoints of each of the parties during the negotiating sessions. Also called "Negotiating Committees" or "Bargaining Teams."

**News Blackout**—an agreement between the parties that negotiations will be confidential, and that neither party will discuss them with representatives of the news media.

**No Strike/No Lockout**—a common provision that prohibits the union from engaging in a strike or related activities (e.g., slowdowns, "sick-outs") for the term of the agreement, and prohibits the employer from engaging in a lockout. A "lockout" is a tactical denial of employment to a group of workers, intended to pressure them to accept the employer's position on an issue or issues in dispute.

**Package**—1. a proposal on a number of separate, unresolved issues, offered on an "all or nothing" basis, with the various elements linked to each other. See *Linked Offer*. 2. the aggregate fiscal components of an agreement. ("The salary package totalled 13 percent for the three-year period.")

**Past Practice**—the pattern of decisions, actions, and procedures that have characterized the employer's behavior toward its employees in the past, generally involving issues not explicity addressed by the terms of the agreement. The union often seeks contract language committing management to continue past practices that benefit members of the bargaining unit; management typically resists a commitment of this nature. Grievance arbitrators routinely consider past practice when examining disputes based upon ambiguous contract language.

**Quid Pro Quo**—literally, "something for something," a provision that is agreed to by one party in consideration of the other party's agreement to some other provision.

**Ratification**—formal approval of a tentative agreement, typically resulting from a positive vote by the members of the bargaining unit and by the governing board.

**Reopener**—a provision that "reopens" some portion of an agreement for renegotiation at a stated time during the term of the agreement, leaving the remainder of the agreement in full effect until its expiration date. Reopeners often involve salaries and fringe benefits (thus called "Wage Reopeners"). A variation is a "Limited Reopener," which involves agreement that each party may, during negotiations, propose revisions only in an agreed-upon number of articles, thus limiting the scope of negotiations.

**Retained Rights**—a standard provision noting that management retains all the rights legally bestowed upon it to control the institution and its personnel, except to the extent that those rights have been abrogated or modified by the express terms of the agreement. Also called "Management Rights."

**Scope of Bargaining**—those issues which must be or are to be subject to collective bargaining negotiations. Subjects are generally divided into mandatory (these must be negotiated), permissible (these may be, but neither party is required to negotiate on them), and prohibited (these are legally barred from negotiations).

**Scope of Unit**—a provision that defines which employees, by job classification and department, are in the bargaining unit covered by the agreement. This is often covered by reference to the labor board's certification of the unit. See *Bargaining Unit, Unit Determination.*

**Separability**—a standard provision that if some portion of the agreement is found to be null and void, it is separated from the remainder of the agreement, which remains valid and in full effect. Also called "Severability."

**Severability**—See *Separability.*

**Strike**—the refusal of members of a bargaining unit(s) to perform duties, as part of a concerted effort to secure concessions from the employer. Sometimes called "withholding of services," "job action," etc.

**Tentative Agreement**—an agreement between the parties that has not been ratified. This term is used for concepts, separate provisions, and entire collective bargaining agreements. It is sometimes abbreviated as TA, and used as a verb or a noun. ("We TA'd workload." "We got a TA on insurance.")

**Third Party**—a neutral individual or panel of individuals who become involved in efforts to resolve a dispute between the two primary parties (the employer and the union). See *Arbitrator, Fact-Finder, Mediator.*

**Unfair Labor Practice**—an allegation by the union or by the employer that the other party has engaged in proscribed activities related to organization, contract administration, or negotiations. Known also as an "Unfair" or a "ULP," such a dispute is usually adjudicated by the labor board. Examples of ULPs include a refusal to bargain in good faith, interference in the other party's operation or selection of representatives, and a refusal to adjust grievances.

**Unilateral Implementation**—the implementation by the employer, following impasse, of the terms of the last proposal offered to the union, when the proposal has not been accepted by the union. If the precedent condition of impassee is not clearly demonstrable, unilateral implementation may constitute an Unfair Labor Practice, a refusal to bargain in good faith.

**Union**—an organization that serves as exclusive representative in collective bargaining for a certified bargaining unit, or seeks to do so.

**Union Rights**—a provision delineating the rights of a union, typically including access to the work place, bulletin boards, meeting rooms, etc.

**Unit Determination**—the process of determining which positions are to be included in a proposed bargaining unit for purposes of collective bargaining. Generally the determination is either made by or must be approved by the labor board. Determination consists of establishing which positions are sufficiently similar in nature (i.e., have "commonality of interest") and which positions are to be excluded because they are managerial, executive, or confidential. Supervisory positions are usually excluded, although the definition of the term varies widely from one jurisdiction to another.

**Work Jurisdiction**—the broad principle that certain types of work to be performed within an organization are to be governed by the provisions of a labor agreement, as opposed to the much narrower proposition that the working conditions of the members of the bargaining unit will be governed by the agreement. Work jurisdiction finds expression in provisions that certain functions may not be performed by anyone who is not in the bargaining unit; a refinement is the proposition that certain tasks may be performed only by individuals in specified job classifications. The negative application of the principle of work jurisdiction is the tight limitation of the duties that may be assigned to any member of the bargaining unit. ("That's not in *my* job description.")

**Zipper Clause**—a provision noting that the agreement is the sole and only agreement between the parties, and is not subject to further negotiations during its term except to the extent there is explicit agreement to reopen part or all of the agreement. "Zipper" refers to the effect of closing negotiations for the term of the agreement. It also offers protection against subsequent assertions that the negotiations included informal agreements in addition to the language of the negotiated agreement.

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"An enjoyable book; an explanation of what happens; a practical picture from an experienced professional. My only regret is that I am not now teaching a course in bargaining so I could use this book on my reading list."

*Thomas E. Mannix, Associate Vice Chancellor*
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*State University of New York*

"*The Right Ball* provides a demystifying insight into a mysterious process—collective bargaining in colleges and universities. Taylor Alderman brings a wealth of experience to bear on this phenomenon . . . .

"He shares his considerable understanding in a highly readable, yet comprehensive, description and analysis of collective bargaining with faculty and staff in colleges and universities. This is a book to be read from cover to cover, and then to occupy a place in your reference collection, so that it will be conveniently at hand to provide guidance and assistance.

"There are a number of helpful books on collective bargaining. None presents the details so clearly or laced so well with wisdom."

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